

UNITED STATES; DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

-----x

19-CR-227 (LJV-MJR)

UNITED STATES OF AMERICA,

vs.

JOSEPH BONGIOVANNI,

Defendant.

Buffalo, New York

August 6, 2024

-----x

**JURY TRIAL EXCERPT - TESTIMONY OF DALE KASPRYZK**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE

TRINI E. ROSS, UNITED STATES ATTORNEY

BY: JOSEPH M. TRIPI, AUSA

BY: NICHOLAS T. COOPER, AUSA

BY: CASEY L. CHALBECK, AUSA

Federal Centre

138 Delaware Avenue

Buffalo, New York 14202

FOR DEFENDANT:

SINGER LEGAL PLLC

BY: ROBERT CHARLES SINGER, ESQ.

80 East Spring Street

Williamsville, New York 14221

-and-

LAW OFFICE OF PARKER ROY MacKAY

BY: PARKER ROY MacKAY, ESQ.

3110 Delaware Avenue

Kenmore, New York 14217

COURT REPORTER:

Diane S. Martens

dmartensreporter@gmail.com

Kasprzyk - Direct - Tripi

P R O C E E D I N G S

\* \* \*

(WHEREUPON, the following is an excerpt taken  
from proceedings.)

**DALE KASPRZYK**, called as a witness, being duly sworn,  
testifies as follows:

**MR. TRIPI:** May I inquire, your Honor?

**THE COURT:** You may.

**MR. TRIPI:** Thank you, your Honor.

**DIRECT EXAMINATION BY MR. TRIPI:**

**Q** Good morning, Mr. Kasprzyk.

**A** Good morning, sir.

**Q** Where do you currently reside?

**A** I currently reside in Estero, Florida.

**Q** And how long have you been a Florida resident?

**A** Ten months.

**Q** Prior to that, where did you live?

**A** Prior to that, I lived in the Western New York  
area. I lived primarily in Orchard Park, New York.

**Q** What do you currently do for a living?

**A** I am the head of the financial investigations unit  
for M&T Bank.

**Q** How long have you been doing that work?

Kasprzyk - Direct - Tripi

9:48AM 1 A A little over ten years.

2 Q Prior to that role at M&T Bank, what did you do for  
3 work?

4 A I was employed by the Drug Enforcement  
9:49AM 5 Administration.

6 Q How many years were you employed by the DEA, for  
7 short?

8 A I worked for the DEA for approximately 25 years.  
9 1989 to 2013.

9:49AM 10 Q And during your tenure, what different places did  
11 the DEA have you assigned, locations?

12 A When I was initially hired, I attended basic agent  
13 training and that was in Quantico, Virginia. And upon  
14 graduation from the training academy, I was assigned to the  
9:49AM 15 Buffalo office.

16 Q Are you from the Buffalo area originally?

17 A Originally I'm from Buffalo.

18 Q And so you worked essentially your whole career  
19 after the academy in the Buffalo office?

9:49AM 20 A Yes, sir.

21 Q When you graduated from the academy, what was your  
22 title?

23 A I was a Special Agent.

24 Q I want to talk a little bit about that training.  
9:50AM 25 Can you tell this jury what the training is like to become a

Kasprzyk - Direct - Tripi

9:50AM 1 DEA Special Agent, please?

2 A The training consists of a number of courses and  
3 modules, training modules. You learn the law, the federal  
4 law as it relates to the Controlled Substances Act. You

9:50AM 5 learn how to conduct street operations, how to do  
6 surveillance, how to initiate -- do controlled buys of  
7 narcotics. You learn about DEA policy and procedures. You  
8 also learn about weapons handling, how to shoot. You learn  
9 about how to protect yourself through physical training. So

9:50AM 10 it's a, it's an extensive academy several months long.

11 Q How long -- that was my next question. How long is  
12 the academy?

13 A When I went through, it was about 16 weeks, about  
14 four months long.

9:51AM 15 Q Prior to joining the DEA and going through the  
16 application process, did you have any other law enforcement  
17 experience?

18 A Yes, sir.

19 Q What was your background prior to that?

9:51AM 20 A I was a police officer with the Reno Police  
21 Department in Reno, Nevada. I joined the Reno Police  
22 Department in 1982. Left there in approximately 1987 as a  
23 police lieutenant. And then I came back to Buffalo where I  
24 was employed by the Erie County District Attorney's office as  
9:51AM 25 a criminal investigator.

Kasprzyk - Direct - Tripi

9:51AM 1 Q And prior -- I'm working backwards -- prior to  
2 joining that Reno Police Department, did you have any formal  
3 education?

4 A Yes, sir. I attended Buffalo State College,  
9:51AM 5 college at Buffalo. Not sure what they call it now.

6 Q I think it's University now.

7 A Yes, thank you, sir. It was here in Buffalo.

8 Q And did you graduate with a degree from that  
9 school?

9:52AM 10 A Yes, sir, I graduated with a bachelor's degree in  
11 criminal justice.

12 Q Now I would like to get back to the DEA training in  
13 the academy.

14 Does that training consist of specific techniques  
9:52AM 15 that the DEA trains agents in to learn how to investigate  
16 narcotics cases?

17 A Yes, sir.

18 Q And I want to go through those in just a moment but  
19 what is the DEA's mission?

9:52AM 20 A Our mission is to investigate violations of the  
21 Controlled Substances Act, Title 21.

22 Q And does the DEA have what are called Field Offices  
23 all over the country?

24 A Yes, sir.

9:52AM 25 Q Are those offices limited to the Continental United

Kasprzyk - Direct - Tripi

9:52AM 1 States or does it extend beyond that?

2 A No, sir. We have offices in international  
3 locations, as well.

4 Q When you graduate from the DEA academy, do you take  
9:53AM 5 an oath?

6 A Yes, sir.

7 Q What is that oath?

8 A That oath is to uphold the laws and the  
9 Constitution of the United States of America, to be true to  
9:53AM 10 the mission of the DEA, and to protect and honor the  
11 organization.

12 Q Is honesty an important value instilled in agents  
13 at the DEA academy?

14 A Yes, sir, it is.

9:53AM 15 Q Is integrity important in your work as a DEA agent?

16 A Yes, sir.

17 Q Is truthfulness in report writing and accuracy  
18 something that is important as a DEA agent?

19 A Yes, sir.

9:53AM 20 Q Explain why.

21 A When you work as a federal narcotics agent, you are  
22 expected to, to be honest in your interactions with other  
23 agents. You're expected to be honest in your interactions  
24 with your managers and your supervisors. It goes to the  
9:54AM 25 integrity of the investigation. It goes to your integrity

Kasprzyk - Direct - Tripi

9:54AM 1 when you testify in court. And it's the foundation to  
2 becoming a successful agent: Your integrity and your ability  
3 to be honest.

4 Q Are DEA agents, or anyone in the DEA, allowed to  
9:54AM 5 take a person who's under investigation's race into account  
6 in the course of an investigation?

7 A Their race?

8 Q Yeah.

9 A No, sir.

9:54AM 10 Q Are DEA agents allowed to take someone's gender  
11 into account when deciding whether to investigate them?

12 A No, sir.

13 Q How about their socioeconomic status?

14 A No, sir.

9:54AM 15 Q How about friendship or personal relationships?

16 A If you, as an agent, have identified a suspect of a  
17 drug investigation and that suspect is a friend, then you as  
18 an agent cannot work that investigation.

19 Q Why is that?

9:55AM 20 A That would be a conflict of interest. And that  
21 would impact the integrity of the investigation and that  
22 would impact the agent's ability to make good decisions as it  
23 relates to the course of that investigation.

24 Q I'd like to get back to that topic in a little bit  
9:55AM 25 but getting back to the specific topics that the DEA trains

Kasprzyk - Direct - Tripi

9:55AM 1 agents on to become a DEA special agent, does that include  
2 how to do what's called physical surveillance?

3 A Yes, sir.

4 Q Can you briefly describe for the jury what physical  
9:55AM 5 surveillance is?

6 A Physical surveillance is the act of preparing to go  
7 out and watch and observe the actions of a potential drug  
8 violator. Physical surveillance is something that DEA agents  
9 do often in their course of -- in the course of their duties  
9:56AM 10 as part of the investigation process.

11 Q Is that one type of investigative techniques that  
12 agents utilize?

13 A Yes, sir.

14 Q Does the DEA in the academy train agents how to  
9:56AM 15 investigate drug organizations through use of communication  
16 devices like cell phones?

17 A Yes, sir.

18 Q Can you briefly describe how the DEA trains agents  
19 to conduct that aspect of investigations?

9:56AM 20 A Yes, sir. So, communication devices -- cell phones  
21 or landlines -- those are often devices used by drug  
22 traffickers to communicate with other drug traffickers or  
23 other members of the Drug Trafficking Organization. As a  
24 federal narcotics agent working for the DEA, you are trained  
9:56AM 25 to use techniques to identify the telephone number that's

Kasprzyk - Direct - Tripi

9:56AM 1 being used by the drug trafficker. And once that number is  
2 obtained, you can then apply for either a pen register or  
3 subpoena toll records or maybe even go up on a Title III  
4 wiretap of that communication device. Again, using those  
9:57AM 5 techniques to gather information and evidence to support your  
6 investigation.  
7 Q And what do you mean by a toll record subpoena?  
8 A That is a subpoena that we would send to the  
9 provider of the cell phone company. So, for example, if your  
9:57AM 10 cell phone company was Verizon, we would send a subpoena to  
11 Verizon and Verizon would send us the toll records, so, the  
12 records of any calls made by that cell phone.  
13 Q And what is a pen register?  
14 A A pen register is a Court-authorized device that is  
9:57AM 15 installed at the cell phone switch that allows the agents to  
16 collect information contemporaneous to the actual call being  
17 made. So when the call is made, the pen register will  
18 activate and it will show the call that is being made by the  
19 cell phone.  
9:58AM 20 Q And does the DEA train agents on how to utilize  
21 information returned from phone record subpoenas and pen  
22 registers to advance investigations into organizations?  
23 A Yes, sir.  
24 Q Does the DEA train agents on how to develop and  
9:58AM 25 utilize confidential sources?

Kasprzyk - Direct - Tripi

9:58AM 1 A Yes, sir.

2 Q How does the DEA train agents to utilize  
3 confidential sources?

4 A Confidential sources are an important part of a  
9:58AM 5 drug investigation. A confidential source, or a source of  
6 information, is a person who often is interacting directly  
7 with the drug traffickers and those interactions can be  
8 shared with the agent. And it helps the agent not only  
9 understand what is happening within the drug trafficking  
9:59AM 10 organization, but potentially could lead to the path of  
11 making a controlled buy from that particular drug trafficker.

12 Q And what is a controlled buy?

13 A A controlled buy is when a confidential  
14 informant -- a documented confidential informant -- will come  
9:59AM 15 to the DEA office, meet with his assigned controlling agent,  
16 be given agency funds, money that is serialized that is  
17 provided to him from the DEA. He's then equipped with a  
18 transmitter, a device which allows us to listen and record  
19 the conversation that would happen. And then that individual  
9:59AM 20 is put under surveillance and sent out to meet with the drug  
21 trafficker to purchase narcotics with those funds that were  
22 provided by the DEA. Once the purchase is complete, the  
23 informant would meet back with his controlling agent, deliver  
24 the drugs to them and that would conclude the controlled buy.

10:00AM 25 Q I'd like to ask you about a few more techniques

Kasprzyk - Direct - Tripi

10:00AM 1 that agents are trained upon, okay.

2 Are agents trained in the technique of doing a  
3 trash pull at the academy?

4 A Yes, sir.

10:00AM 5 Q What is a trash pull?

6 A So a trash pull is a technique that DEA agents will  
7 use to help gather evidence from a suspected drug trafficker.

8 A trash pull is initiated through surveillance. You would  
9 conduct surveillance operations on a target. You would

10:00AM 10 determine what day was trash day and then you would travel  
11 out in the, in the midnight hours and collect that, that  
12 target's trash that was left at the curb and go through that  
13 trash to determine if there was any evidence of drug  
14 trafficking activity within the trash.

10:01AM 15 Q And are agents trained in the use of pole cameras  
16 as a surveillance technique?

17 A Yes, sir.

18 Q And what is a pole camera surveillance technique as  
19 agents are trained on by the DEA?

10:01AM 20 A A pole camera is a device, a camera, a visual  
21 device that's set up in a public location. And that public  
22 location would be used to place the camera and the camera  
23 would be then directed towards an area of concern that the  
24 agents had identified as part of the drug trafficking

10:01AM 25 investigation that they were engaging in. So, an example

Kasprzyk - Direct - Tripi

10:01AM 1 might be a particular residence or business location where  
2 the target was doing business as a drug trafficker, that  
3 camera would be focused on that area and would allow the  
4 agents to monitor the activity remotely from another location  
10:02AM 5 without having to have physical surveillance in the area.

6 Q So, example, through use of technology, could  
7 agents sometimes monitor pole cameras from their phones while  
8 they're in their home?

9 A I'm not sure, sir -- I retired in 2013 -- if the  
10:02AM 10 technology has advanced that far.

11 Q Fair enough. Fair enough.

12 A Back in 2013 we would be able to monitor it from  
13 the office and see the activity.

14 Q And now you mentioned earlier Title III wiretaps?

10:02AM 15 A Right.

16 Q I'll ask you to describe the training in that  
17 regard in just a moment. But are all of the techniques that  
18 you've just discussed, surveillance, pen registers, phone  
19 records subpoenas, trash pulls, pole cameras, are those all  
10:02AM 20 different investigative techniques that need to be either  
21 attempted or utilized or considered before an agent is  
22 allowed to apply for a Title III wiretap?

23 A Yes, I would say that -- those are often the  
24 techniques that are utilized beforehand, not necessarily  
10:03AM 25 required before we go to a Title III but certainly are

Kasprzyk - Direct - Tripi

10:03AM 1 techniques that we would -- that I would encourage as a group  
2 supervisor to have the agent consider as part of the  
3 application process.

10:03AM 4 Q And is that part of the requirement for a Title III  
5 exhaustion, you have to either use or consider other  
6 techniques before you use the technique of a wiretap?

7 A Yes, sir, that's correct.

8 Q And that's before the Department of Justice would  
9 authorize you to even try to use a wiretap --

10:03AM 10 A Correct.

11 Q -- is that right? What is a wiretap? And then  
12 we'll move on from the training.

13 A A wiretap is -- again, the wiretap affidavit and  
14 warrant is issued by a Court -- a District Court Judge --  
10:04AM 15 would sign an authorization for a Title III wiretap. Once  
16 that authorization is obtained by the agent, the agent is  
17 entitled to meet with the provider of the phone company.

18 And, again, using Verizon as an example, you would meet with  
19 Verizon, present with them the wiretap order and that would  
10:04AM 20 then allow equipment to be installed where agents at a  
21 listening post, most often at the DEA office, would be able  
22 to listen to phone conversations that the trafficker was  
23 having contemporaneous to when those conversations were  
24 occurring. So, if the trafficker picked up the phone to make  
10:04AM 25 a call, the agents in the office would be able to listen to

Kasprzyk - Direct - Tripi

10:04AM 1 that call as it was occurring.

2 Q So when did you graduate from the DEA academy?

3 A 1989.

4 Q And you mentioned it a moment ago, you retired in

10:04AM 5 2013?

6 A Yes, sir.

7 Q So, in between those two points in time, you worked  
8 here in Buffalo?

9 A Yes, sir.

10:04AM 10 Q What were the different positions you held within  
11 the Buffalo DEA office?

12 A I was a special agent. I was a acting group  
13 supervisor. I was a group supervisor. And then I was the  
14 resident agent in charge of the office.

10:05AM 15 Q I'd like to go through each of those positions you  
16 held just briefly, okay?

17 A Yes, sir.

18 Q What was your role in the DEA Buffalo office as a  
19 DEA special agent?

10:05AM 20 A I worked as a special agent when I first came to  
21 the office for a number of years. I worked in both the  
22 Enforcement Group Delta 57, as well as the Task Force Group  
23 Delta 58 as a special agent.

24 Q Now you just mentioned two groups. Can you explain  
10:05AM 25 that for the jury?

Kasprzyk - Direct - Tripi

10:05AM 1 A Yes, sir. At -- during my time in the office,  
2 there were two enforcement groups within the DEA office in  
3 Buffalo. One group was our, our primarily agents group. It  
4 was our Delta 57 group. That had a combination of agents and  
10:05AM 5 task force agents. And then we had a task force group known  
6 as Delta 58, D-58. That was a group that had some agents but  
7 had a higher population of task force agents.

8 Q And what is a task force agent? So when you say  
9 agents, are you referring to a DEA special agent who's gone  
10:06AM 10 through the academy and sworn the oath that you've  
11 described --

12 A Correct.

13 Q -- correct? Now that other term you've used "task  
14 force agent", is that also called a task force officer?

10:06AM 15 A Yes, sir.

16 Q Okay. I'm going to use the term "task force  
17 officer", if that's okay.

18 A That's fine.

19 Q What is a task force officer at the DEA? Can you  
10:06AM 20 explain what that is for the jury?

21 A Yes, sir.

22 A task force officer is a police officer or deputy  
23 sheriff that comes to us from one of the local law  
24 enforcement agencies. So, it could be the Erie County  
10:06AM 25 Sheriff's Department. It could be the Buffalo Police

Kasprzyk - Direct - Tripi

10:06AM 1 Department. A variety of police officers and deputy sheriffs  
2 are represented at the DEA office as task force officers.

3 Q And is their role to assist in drug enforcement  
4 investigations in the mission of the DEA?

10:07AM 5 A Yes, sir.

6 Q Are task force officers often paired up with a,  
7 with a DEA special agent to partner up at times?

8 A Yes, sir.

9 Q What is the purpose of that from your time as  
10:07AM 10 working at the DEA?

11 A Generally, the task force officer is paired with a  
12 special agent because the special agent has greater knowledge  
13 and understanding of the federal drug laws. They have a  
14 greater understanding of how to work a drug investigation  
10:07AM 15 based upon their, their time at the DEA academy. So when  
16 task force officers come into the office and they're, they're  
17 trying to find their way and understand how to do the job of  
18 a DEA agent, we will often almost always pair them up with a  
19 special agent to give them that mentorship and guidance.

10:07AM 20 Q And you indicated you were also an acting group  
21 supervisor and a group supervisor within the DEA. What is  
22 that role?

23 A Well, when I was the acting group supervisor, it  
24 was typically when the group supervisor was away on extended  
10:08AM 25 leave. And at the Buffalo office I was the acting group

Kasprzyk - Direct - Tripi

10:08AM 1 supervisor of the Delta 58 Task Force for a number of months  
2 while the permanent supervisor was on leave. When you're the  
3 acting group supervisor, you assume all of the duties and  
4 responsibilities as the group supervisor.

10:08AM 5 Q And what does a group supervisor do?

6 A The group supervisor provides direction and  
7 guidance to the agents and task force officers to assist them  
8 as they conduct their investigations. The group supervisor  
9 will assist in the establishment of new cases, will assist in  
10 the establishment of confidential informants, and will also  
11 assist on street operations, enforcement operations that are  
12 occurring on the street.

13 Q And eventually you became the Resident Agent in  
14 Charge of that office?

10:09AM 15 A Yes, sir.

16 Q Approximately when did you become the Resident  
17 Agent in Charge?

18 A Would have been approximately 2011.

19 Q Until your retirement?

10:09AM 20 A Yes, sir.

21 Q And what is the role of a Resident Agent in Charge?

22 A The Resident Agent in Charge is the manager of the  
23 office. So, at the time we had the two enforcement groups  
24 that I mentioned: D-57, D-58. We also had a diversion group  
10:09AM 25 that was located within the Buffalo office. So I would be

Kasprzyk - Direct - Tripi

10:09AM 1 responsible for the overall management of the office. The  
2 GSs on all of those groups would report directly to me.

3 Q GS is group supervisor?

4 A Yes, sir.

10:10AM 5 Q Resident Agent in Charge is "RAC"?

6 A Yes, sir.

7 Q And if the jury hears the term "SA", does that mean  
8 special agent?

9 A Yes, sir.

10:10AM 10 Q Okay. As the RAC, for example, is one of your  
11 duties to manage the budget?

12 A Yes, sir.

13 Q Now I'd like to talk a little bit about case work  
14 and the division of labor in the DEA office, okay?

10:10AM 15 A Yes, sir.

16 Q What -- are you familiar with the term "case  
17 agent"?

18 A Yes.

19 Q What does the term "case agent" mean?

10:10AM 20 A So if you are a designated case agent, you are the  
21 manager of a particular criminal investigation. The case  
22 agent is typically the, the agent that opens up the  
23 investigation. He or she is the person that initiated the  
24 case and he is controlling all aspects of that investigation.

10:11AM 25 Q And as a case agent on a case, are DEA special

Kasprzyk - Direct - Tripi

10:11AM 1 agents required as part of their duties to initiate cases as  
2 agents?

3 A Yes, sir.

4 Q Who are the people who drive the casework that the  
10:11AM 5 DEA does in any given office?

6 A Typically the special agents are the employees that  
7 drive the new case investigations.

8 Q Who makes decisions about what cases to initiate?

9 A It is the special agents that make that initial  
10:11AM 10 decision.

11 Q And supervisors approve?

12 A Supervisors discuss and approve.

13 Q Who makes decisions on a day-to-day basis about  
14 what to do or not do in a DEA case?

10:11AM 15 A That would be the case agent.

16 Q Now, other people who work in the DEA Buffalo  
17 office, are you familiar with the role of an intel analyst?

18 A Yes.

19 Q What is the role of an intel analyst?

10:12AM 20 A The intelligence analyst at the DEA office would  
21 provide support and assistance. So, if an agent wanted to  
22 develop background on a particular suspect, he would go to  
23 the intel analyst and request that that person conduct as  
24 much background research on that individual as they could.

10:12AM 25 Q Does that often include an agent asking an intel

Kasprzyk - Direct - Tripi

10:12AM 1 analyst to issue subpoenas for phone numbers or other items?

2 A That may, that may be part of those duties, that's  
3 right.

4 Q As it relates to the dynamic between case agents  
10:12AM 5 and intel analysts, who's in charge of a given investigation?

6 A It is the case agent that is in charge of the  
7 investigation.

8 Q Other than intel analysts, are there other support  
9 staff that are employed in the DEA office?

10:13AM 10 A We have forfeiture analysts. Those are generally  
11 contractors but they do work in the DEA office. And they  
12 would support the case agent as part of the investigation if  
13 they were conducting forfeiture activities.

14 Q As to the dynamic between the case agent and a  
10:13AM 15 forfeiture analyst, who's in charge of making decisions on a  
16 given investigation?

17 A It is the case agent.

18 Q Who decides when to open a specific investigation  
19 within the DEA?

10:13AM 20 A It is the case agent that initially develops the  
21 case and brings that information to the office for the case  
22 opening.

23 Q And who decides when to initiate closure of a DEA  
24 case file?

10:14AM 25 A It is the case agent.

Kasprzyk - Direct - Tripi

10:14AM 1 Q Do you know Joseph Bongiovanni?

2 A I do.

3 Q How do you know him?

4 A I know him through my time working with Joe at the

10:14AM 5 DEA Buffalo office.

6 Q Did you spend some time working with him at -- when

7 you were a special agent yourself?

8 A Yes, sir.

9 Q And then ultimately did you become his group

10:14AM 10 supervisor for a period of time?

11 A Yes, sir.

12 Q And later on once you became the RAC, you're in

13 charge of the whole office, was he still working in Buffalo

14 under you as the RAC of the office?

10:14AM 15 A Yes, sir, he was.

16 Q How many years in total would you say between your

17 time as a group supervisor or a Resident Agent in Charge

18 would you have had some type of supervisory role over

19 Mr. Bongiovanni?

10:15AM 20 A I would say four to five years.

21 Q Does that include time as a GS and a RAC?

22 A Yes, sir.

23 Q How many years were you his group supervisor

24 directly?

10:15AM 25 A Approximately two and a half years.

Kasprzyk - Direct - Tripi

10:15AM 1 Q And what years would those be?

2 A '09, 2010, and maybe a little bit of 2011. I just  
3 I don't remember exactly when I was promoted but in that time  
4 period.

10:15AM 5 Q And then from roughly approximately 2011 to '13,  
6 you were the RAC?

7 A Correct.

8 Q Okay. Of your 25-year career at the Buffalo  
9 office, approximately how, how many years did you work in  
10 some capacity with the defendant?

11 A I joined DEA in 1989. Joe came to Buffalo about  
12 eight years after I had gotten there. So, I would say 17  
13 years in total.

10:16AM 14 Q Were there individuals that this defendant --  
15 withdrawn.

16 I should have asked you this. Do you recognize the  
17 defendant? Is he in court today?

18 A Yes, sir.

10:16AM 19 Q Can you please point to him and describe  
20 something's wearing?

21 A He's sitting between defense counsel. Dark gray  
22 suit.

23 MR. TRIPI: Your Honor, may the record reflect the  
24 in-court identification, please?

10:16AM 25 THE COURT: It does.

Kasprzyk - Direct - Tripi

10:16AM 1 **MR. TRIPI:** Thank you.

2 **Q** During the defendant's tenure in the DEA that  
3 overlapped with yours, were there certain people that he  
4 partnered up with or worked closely with?

10:16AM 5 **A** Yes, sir.

6 **Q** And can you name some of those people that you  
7 recall he worked closely with on cases?

8 **A** There were a number of task force officers that Joe  
9 worked with. I think initially Joe was partnered up with  
10 Phil Torre. Phil was a Buffalo police officer assigned to  
11 the office. After Phil, I believe it was Tom Doctor  
12 (phonetic) that Joe most often worked with. Tom Doctor,  
13 again, was a Buffalo police officer assigned to the task  
14 force office, or task force group. After Tom Doctor, it was  
10:17AM 15 Joe Palmieri. Joe Palmieri was, I believe, a Tonawanda  
16 detective who had come to the Buffalo office and was working  
17 with Joe. So that would be the three task force officers who  
18 had extended, you know, time working with Joe.

19 **Q** And as to that dynamic, he would have been the DEA  
10:17AM 20 special agent that went through the training we've discussed  
21 and they were the task force officers from local agencies,  
22 correct?

23 **A** That's correct.

24 **Q** Now, were there any other special agents that the  
10:18AM 25 defendant seemed close with or worked with from time to time

Kasprzyk - Direct - Tripi

10:18AM 1 in the office?

2 A Through the years, Joe worked with a number of  
3 agents. I would say most recently when I was managing Joe,  
4 the one agent that he maybe worked the most with would have  
10:18AM 5 been Mike Hill.

6 Q And Mike Hill, unlike those other three, was a  
7 special agent?

8 A Correct.

9 Q Now, during your tenure from your group supervisor  
10:18AM 10 level on through your time as the RAC at the DEA office --  
11 let me withdraw that before I get there.

12 How are agents and task force officers paired up?  
13 Are they assigned or does that happen organically? Do you  
14 know what I mean by that?

10:19AM 15 A I do. Generally, most often it happens  
16 organically.

17 Q Okay. So, task force officers come into the  
18 office, they kind of meet people or have relationships  
19 already and start working with people?

10:19AM 20 A That's exactly right.

21 Q Okay. Are there ever times where an agent will  
22 sort of pitch or refer someone they've worked with at a local  
23 agency and suggest that they be brought on as a task force  
24 officer?

10:19AM 25 A Yes.

Kasprzyk - Direct - Tripi

10:19AM 1 Q Do you recall or are you aware of any situations  
2 where that occurred where the defendant pitched or tried to  
3 advance someone that he had a relationship working with one  
4 of those other agencies, to become a task force officer?

10:19AM 5 A No.

6 Q Okay. Now, in terms of your relationship with the  
7 defendant as a supervisor, did you ever tell him not to  
8 investigate a case?

9 A No.

10:20AM 10 Q Did you ever tell him not to investigate a  
11 marijuana trafficker?

12 A No.

13 Q Did you ever tell him not to investigate  
14 cross-United States continent, cross-country marijuana  
10:20AM 15 trafficking?

16 A No.

17 Q Did you ever tell him not to investigate drug  
18 trafficking that occurred over an international border?

19 A No.

10:20AM 20 Q Did you ever decline to support investigations that  
21 he wanted to initiate?

22 A No.

23 Q As far as you recall and in your experience with  
24 the defendant, when he asked you for things for cases, were  
10:21AM 25 you supportive of him?

Kasprzyk - Direct - Tripi

10:21AM 1 A Yes.

2 Q Back in the timeframe you were at the DEA all the  
3 way up through your retirement in 2013, were large-scale  
4 marijuana conspiracies important to investigate for the DEA?

10:21AM 5 A Yes, they were.

6 Q Were 1,000 kilogram or more marijuana conspiracies  
7 something the DEA would investigate and look to dismantle in  
8 this area?

9 A Yes.

10:21AM 10 Q Going back to academy training for a moment.

11 Are agents at the DEA academy trained in money  
12 laundering?

13 A Yes, sir.

14 Q And, in fact, you have that role at a bank now,  
10:21AM 15 correct?

16 A Yes, I do.

17 Q And did you get that job, in part, because of your  
18 DEA training?

19 A Yes, sir.

10:22AM 20 Q What is money laundering very basically and very  
21 briefly?

22 A Money laundering is the act of taking illicit  
23 funds, funds that were used and developed as part of a drug  
24 trafficking organization. Those illicit funds are then taken  
10:22AM 25 and washed, laundered, turned into legitimate funds through

Kasprzyk - Direct - Tripi

10:22AM 1 the act of placing those funds into some sort of financial  
2 institution.

3 Q Okay. And does this defendant have that same type  
4 of background and training?

10:22AM 5 A Yes, sir, he does.

6 Q I'm going to direct your attention back to the 2009  
7 timeframe. And I think you said you were a group supervisor  
8 of the defendant in that timeframe, is that --

9 A Yes, sir.

10:23AM 10 Q -- right?

11 I've talked about marijuana. Were cocaine  
12 traffickers people of interest for the DEA in Buffalo to  
13 investigate?

14 A Yes, they were.

10:23AM 15 Q How about people who knew or had access to  
16 kilograms of cocaine?

17 A Yes.

18 Q You talked a little bit about how agents are  
19 trained to utilize confidential sources at the academy. Are  
10:23AM 20 they also trained on rules and procedures for signing people  
21 up to work as confidential sources?

22 A Yes, they are.

23 Q You've told us what a confidential source is. Can  
24 you tell the jury what the process and procedure that agents  
10:23AM 25 are trained in that they have to go through to sign up -- the

Kasprzyk - Direct - Tripi

10:24AM 1 steps of signing up a DEA confidential source?

10:24AM 2 A For an agent to sign up a person as a confidential  
3 source, that source would be required to come to the Buffalo  
4 DEA office. The agent would meet with the source. They  
5 would take pictures. They would take fingerprints. There'd  
6 be a number of forms that the informant, prospective  
7 informant, would need to sign. One of them was a DEA-473  
8 form which outlines the responsibilities that the informant  
9 would have while working for the DEA.

10:24AM 10 That information is collected. There is a  
11 background check done on the informant to include a criminal  
12 history check. And all of that information is collected and  
13 put together in a file, an informant file, and the informant  
14 was then given a documented source number, informant number,  
10:24AM 15 CI number.

16 Q Is that informant file kept in a physically  
17 separate place?

18 A Yes, sir, it is.

19 Q Is it kept securely?

10:25AM 20 A Yes.

21 Q Are agents trained and is it reinforced in agents  
22 to protect the identity of these confidential sources?

23 A Yes.

10:25AM 24 Q Is that an important duty and function of a DEA  
25 agent: To protect the identity of confidential sources?

Kasprzyk - Direct - Tripi

10:25AM

1 A Yes.

2 Q And is a word interchangeable for confidential  
3 source, confidential informant? Same thing?

4 A Yes, sir.

10:25AM

5 Q Why is it important and why are agents trained  
6 specifically that as part of their duties, they are to  
7 protect and secure the identity of confidential sources?

8 A The confidential informant provides very sensitive  
9 information to the DEA on drug trafficking activities. It's  
10 important for the DEA to keep that information confidential  
11 to insure the informant's safety and to protect the integrity  
12 of the investigation.

10:25AM

13 Q What do you mean by protect the integrity of the  
14 investigation? Can you elaborate for the jury?

10:26AM

15 A We -- when working with informants, we do not put  
16 their name -- the informant's name in a report because we  
17 don't want that information to be shared with other potential  
18 witnesses to the investigation. We want that information to  
19 be very confidential and we don't want that to be

10:26AM

20 inadvertently distributed to people that don't have a need to  
21 know.

22 Q If confidential informant or confidential source  
23 identities become known to drug organizations, could that  
24 jeopardize their safety?

10:26AM

25 A Yes, sir.

Kasprzyk - Direct - Tripi

10:26AM 1 Q When an agent wants to sign up an informant -- you  
2 touched on it a moment ago -- is it typically an initial  
3 debrief, is that attended by another witness and a group  
4 supervisor?

10:27AM 5 A Yes, sir, that is typically how it goes.

6 Q So, just distinguish for a moment as the RAC, when  
7 you had that role, you're typically not sitting in on those  
8 debriefings, correct?

9 A Correct.

10:27AM 10 Q But as the group supervisor, sort of the first line  
11 supervisor, you would sit in those types of debriefings; is  
12 that right?

13 A That is correct.

14 Q All right. In reports that are written, are agents  
10:27AM 15 allowed or supposed to refer to confidential sources or  
16 informants by name or by that number you referenced?

17 A By the number.

18 Q Is that another step in maintaining the  
19 confidentiality of the person?

10:27AM 20 A Yes, sir.

21 Q Now, is there -- are you familiar with the term  
22 "source of information"?

23 A Yes, sir.

24 Q Is there a difference -- well, withdrawn.

10:28AM 25 What is a source of information as distinguished

Kasprzyk - Direct - Tripi

10:28AM 1 from a confidential source or an informant?

2 A A source of information is an individual that a DEA  
3 agent may be talking to that is providing information on drug  
4 trafficking activities. That source of information is not a

10:28AM 5 documented confidential informant and that source of  
6 information is listed by name in a DEA-6 when that  
7 information's documented as part of the case investigation.

8 Q "DEA-6", is that another term for a written report  
9 that agents make?

10:28AM 10 A Yes, sir.

11 Q Report of an investigation?

12 A Yes, sir.

13 Q Are those documents that document various steps in  
14 an investigation?

10:28AM 15 A Correct.

16 Q When an informant or a confidential source  
17 participates and aids an agent in some type of investigative  
18 activity, is that supposed to be documented in a  
19 confidential -- excuse me, DEA-6 report?

10:29AM 20 A Yes, sir.

21 Q Is that supposed to be cross-referenced to that  
22 informant's file?

23 A Correct.

24 Q Why do you cross-reference to the informant file?

10:29AM 25 A The report is cross-referenced to the informant

Kasprzyk - Direct - Tripi

10:29AM 1 file so that I, as the manager, can look at the informant  
2 file and determine what cases that that particular informant  
3 is assisting the agents on.  
4 Q And do agents have a duty to document their  
10:29AM 5 interactions, as we've just discussed, with confidential  
6 sources and informants on investigations?  
7 A Yes, sir.  
8 Q And to make sure that those reports make their way  
9 to the informant file?  
10:29AM 10 A Correct.  
11 Q Do they also have a duty to document information  
12 provided by those sources of information?  
13 A Yes.  
14 Q And now those people are allowed to have their  
10:29AM 15 names documented in a report?  
16 A Correct.  
17 Q Okay. Why is it important for agents to truthfully  
18 and accurately document information by confidential sources?  
19 Let's start there.  
10:30AM 20 A It's important to have that information on record  
21 so that when you are reflecting back and preparing for court,  
22 reflecting back on the statements provided to you by that  
23 confidential informant, that you have a permanent record of  
24 what that informant said to you. So, to preserve the  
10:30AM 25 integrity of that investigation and to preserve the integrity

Kasprzyk - Direct - Tripi

10:30AM 1 of those communications with the informant and the agent, it  
2 needs to be documented in a report of investigation DEA-6.

3 Q And why is it also -- separately, why is it also  
4 important to document actions in an investigation --

10:30AM 5 withdrawn -- information, that sources of information provide  
6 to agents in an investigation? (

7 A For the same reasons that I described: The  
8 integrity of the investigation, the integrity of those  
9 conversations. They're all documented in a DEA-6 to ensure  
10:31AM 10 that there is a permanent record of what was said by that  
11 source of information.

12 Q Is it also important if, for example, do you have  
13 some agents who have military obligations?

14 A (No response.)

10:31AM 15 Q Are there DEA agents who sometimes, for example,  
16 have military duty?

17 A Yes, sir.

18 Q Or other things in their life that take them out of  
19 the office for a while?

10:31AM 20 A Yes, sir.

21 Q And on occasion if that type of situation arises,  
22 do cases get assigned -- reassigned?

23 A Yes, sir, they do.

24 Q Is it important to have the information and  
10:31AM 25 investigative material documented so that someone else can

Kasprzyk - Direct - Tripi

10:31AM 1 further an investigation if that were to ever happen?

2 A Yes, that's correct.

3 Q Is it important to have that information documented  
4 in a file so maybe years in the future, another agent could

10:32AM 5 pick an investigation up and make a link back to something  
6 that happened years earlier?

7 A Yes, sir, that's correct.

8 Q Does that happen in DEA investigations?

9 A Yes, it does.

10:32AM 10 Q Is that why it's important to document these  
11 things?

12 A Yes, sir.

13 Q I'm going to ask you a about a particular report in  
14 a little bit. At any time prior to November 6th, 2009, did  
10:32AM 15 this defendant ever come up to you as his group supervisor  
16 and say I have a source of investigation, Peter Gerace, an  
17 owner of a strip club?

18 A No, he did not.

19 Q At any point prior to that, did the defendant ever  
10:32AM 20 come up to you and say I know a strip club owner named Peter  
21 Gerace and I'd like to sign him up as a confidential source,  
22 an informant with me?

23 A No, he did not.

24 Q Now, if there were someone who was on probation or  
10:33AM 25 parole -- let's stick with U.S. Probation. Are you familiar

Kasprzyk - Direct - Tripi

10:33AM 1 with any rules that probation has if someone under their  
2 supervision is identified by an agent under your supervision  
3 as a potential confidential source?  
4 A Yes, sir.

10:33AM 5 Q And have you had that situation many times where  
6 you had to coordinate that type of thing?  
7 A Yes, sir.

8 Q With probation and the various stakeholders  
9 including getting court permission?

10:34AM 10 A Yes.

11 Q Can you explain those rules and how that works out?  
12 A Yes. So, for individuals who are on United States  
13 probation, if you as an agent would like to sign that person  
14 up as a confidential informant, that would be considered a  
10:34AM 15 restricted use informant. And as a restricted use informant,  
16 there are approvals that you would have to obtain to be able  
17 to utilize that individual as a documented confidential  
18 informant. Those approvals include meeting with the  
19 probation officer and getting the approval of the probation  
10:34AM 20 officer, meeting with the judge, and getting the approval of  
21 the judge who is managing that particular probationee. Also  
22 meeting with the prosecutor, getting their approval. And  
23 then there would be internal approvals within DEA management  
24 that would have to be obtained before that person could be  
10:35AM 25 utilized as a documented confidential source.

Kasprzyk - Direct - Tripi

10:35AM 1 Q Okay. Now I'd like to focus you in on your role as  
2 group supervisor, front line supervisor, for a moment.

3 Are there different reports and forms that, as a  
4 group supervisor, you review and sign off on?

10:35AM 5 A Yes, sir.

6 Q Can you explain that process for the jury?

7 A As a group supervisor, I would have an in-box. I  
8 would check that in-box every day and agents would prepare  
9 reports, submit them into my in-box and I would sign them,  
10:35AM 10 review them and sign them almost daily.

11 Q And as a group supervisor, how many agents and task  
12 force officers would be under your supervision?

13 A When I was managing Joe, he was assigned to group  
14 D-57, Delta 57. At the time there was about 12 or 13 people  
10:36AM 15 in that group. It was a combination of agents and task force  
16 officers. If I'm remembering, it was maybe four to five  
17 agents, and the remaining individuals were task force  
18 officers.

19 Q What are the type of DEA documents as a group  
10:36AM 20 supervisor you review and sign off on?

21 A The primary document would be the DEA-6 that I  
22 mentioned earlier. That's a report of investigation. I  
23 would also sign off on DEA-202s, arrest packages. I would  
24 also sign off on operational plans. These are plans that are  
10:36AM 25 submitted by the agent when they are interested in conducting

Kasprzyk - Direct - Tripi

10:36AM 1 some sort of enforcement operation.

2 Q And what do you mean -- just to define the term --  
3 what do you mean by enforcement operation for the jury?

4 A An enforcement operation would generally involve  
10:36AM 5 the agents working as a group, going out on to the street and  
6 conducting some sort of controlled buy or some sort of  
7 surveillance operation.

8 Q Now you retired in 2013. Were these sign-offs and  
9 these forms that you filled out, were they paper forms --

10:37AM 10 A Yes, sir.

11 Q -- at the time? So you were still doing pen and  
12 ink signatures and all that?

13 A Yes.

14 Q And you said you had an in-box. Describe your in  
10:37AM 15 box.

16 A I had a desk and an in-box and the agents would  
17 come in and put the documents in there. If it was something  
18 that needed to be actioned immediately, they would bring it  
19 right to me and hand it to me and ask for me to look at it  
10:37AM 20 immediately.

21 Q But, otherwise, it would go to the in-box and it  
22 would be your job to review things as things piled up?

23 A That's right.

24 Q Are there sometimes when that in-box got real high?

10:37AM 25 A Yes, sir.

Kasprzyk - Direct - Tripi

10:37AM 1 Q Are there instances where your other obligations in  
2 the office impacted how long you spent reviewing each  
3 document?

4 A Correct.

10:38AM 5 Q Who determines when to put something in your  
6 in-box?

7 A The agents.

8 Q When you have that type of situation, do you go  
9 through each form that you're reviewing before you sign off  
10 on it and reinvestigate every single sentence and word that  
11 an agent wrote in the report?

12 A No, sir.

13 Q Why don't you do that?

14 A It would -- it's just not practical. It's  
10:38AM 15 impossible for me to reinvestigate everything that an agent  
16 presents to me. I am trusting the author of the report to  
17 provide to me factual information when they prepare that  
18 report.

19 Q And are there times when you, in your experience,  
10:38AM 20 miss things that might need correcting in a report?

21 A There are times.

22 Q Are there times when you see something that might  
23 be inaccurate and you don't think it's a big deal so you let  
24 it go?

10:39AM 25 A On occasion, that might happen, yes.

Kasprzyk - Direct - Tripi

10:39AM 1 Q Okay. And are there other times when you kick  
2 things back to agents and have them rewrite things?

3 A Correct.

4 Q And what's an example of a time when you, you know,  
10:39AM 5 just an example of a scenario where you might submit  
6 something back to an agent to fix something?

7 A If I saw a particular sentence that described a  
8 incident that I might have been a part of that I know might  
9 have occurred differently, I would send it back and ask the  
10:39AM 10 agent to, to reevaluate what they wrote to ensure that it was  
11 consistent with the facts that had happened.

12 Q And that's a question I want to follow up on. As a  
13 group supervisor, if a case agent has an enforcement action,  
14 is the group supervisor sometimes out on the street still in  
10:39AM 15 a supporting role?

16 A Yes, sir.

17 Q But those enforcement actions are originated by  
18 who?

19 A The case agent.

10:40AM 20 Q And who writes those operational plans that  
21 coincide with enforcement actions?

22 A The case agents.

23 Q Is the case agent responsible for every word  
24 written in those reports?

10:40AM 25 A Generally, yes.

Kasprzyk - Direct - Tripi

10:40AM 1 **MR. TRIPI:** Ms. Champoux, on the screen -- and for the  
2 witness only, please at this point -- can we pull up  
3 Government Exhibit Number 30A, please, for the witness.

4 **Q** Mr. Kasprzyk, that is a two-page document. I want  
10:40AM 5 to give you just a moment to review it. Don't say anything  
6 about it. Once you want to advance to the second page, let  
7 us know. And when you're done looking at it, look back at me  
8 and let me know, okay.

9 **A** (Witness complies.)

10:40AM 10 Next page.

11 **MR. TRIPI:** Ms. Champoux, if you could advance it.

12 Thank you.

13 For the record, he's now looking at Page 2.

14 **A** Yes, sir.

10:41AM 15 **Q** Ms. Champoux, if we can advance it back to the  
16 first page.

17 Looking at Exhibit number 30A -- you've looked at  
18 both pages -- do you recognize that document?

19 **A** Yes, sir. This is a report of investigation DEA-6.

10:41AM 20 **Q** And how do you recognize that specific document?

21 **A** I can see at the bottom of the page my signature.

22 **Q** And you've reviewed this document prior to today?

23 **A** Yes, sir.

24 **Q** Is this a fair and accurate copy of a DEA-6 that  
10:42AM 25 was submitted to you by the defendant that you reviewed and

Kasprzyk - Direct - Tripi

10:42AM 1 signed?

2 A Yes, it is.

3 **MR. TRIPI:** Government offers Exhibit 30A, please.

4 **MR. SINGER:** No objection.

10:42AM 5 **THE COURT:** I'm sorry?

6 **MR. SINGER:** No objection.

7 **THE COURT:** Received without objection.

8 **MR. TRIPI:** Thank you, your Honor.

9 If we can please publish it for the jury.

10:42AM 10 **THE CLERK:** You're all set.

11 **MR. TRIPI:** Oh, thank you very much.

12 **Q** Just generally tell the jury, explain for the jury

13 what this document is and then we'll go through some

14 specifics.

10:42AM 15 A This is a DEA-6 Report of Investigation that was

16 prepared by Joe Bongiovanni. It documents his conversation

17 with an individual identified as Peter Gerace. Peter Gerace

18 had been involved in a, I'll call it an enforcement

19 operation. I believe it was a U.S. Probation investigation

10:43AM 20 that resulted in him testing positive in his urine for

21 cocaine.

22 **Q** Okay. I'll ask you a few questions about it. I

23 just want to get the basics of the form down.

24 A I'm sorry.

10:43AM 25 **Q** No, poor question.

Kasprzyk - Direct - Tripi

10:43AM 1 So, looking at this form, there's some information  
2 filled out in box 3 at the top that's under the term "file  
3 number", do you see that?

4 A I do.

10:43AM 5 Q Can you tell the jury what that number is?

6 A The file number is the particular case number that  
7 is -- that the report was written to. The G-DEP  
8 identifier -- all cases, all investigations within the DEA  
9 are, are G-DEP classified. That would speak to the level of  
10 organization and the particular type of narcotic being sold  
11 by that group. So that's what the G dep identifier  
12 represents.

13 Q If we can zoom out of that, please.

14 If we can, I'd like to highlight boxes 5 and 6.

10:44AM 15 Start with box 5 and go on to box 6 and explain what those  
16 are.

17 A Yes, sir. Box 5 represents or indicates that the  
18 report was prepared by SA Joseph Bongiovanni at the Buffalo  
19 Resident Office, Group D-57 and box 6 is our file title. In  
20 this case, the file was written to -- or the case was written  
21 to the file under Matthew Scalia.

22 Q Just a followup question on this.

23 Who decides what file title to write a report to?

24 A That is the case agent.

10:44AM 25 Q Okay. In this case, the author of this report?

Kasprzyk - Direct - Tripi

10:44AM 1 A Correct.

2 Q So nobody tells him, hey, write this report to this  
3 file, the agent's responsible for that?

4 A Correct.

10:44AM 5 **MR. TRIPI:** If we can zoom out of that, please. Can we  
6 highlight box number 8, Ms. Champoux.

7 Q And what does that box indicate?

8 A The date that the report was prepared.  
9 November 6th, 2009.

10:45AM 10 **MR. TRIPI:** Okay. We can zoom out of that, please.

11 Q There's a couple boxes that are blank. I want to  
12 ask you about those very quickly.

13 Number 1 is labeled program code. What does that  
14 mean? Do you know why that's blank?

10:45AM 15 A I do not. I believe that some cases might have a  
16 particular program code but in this instant there was no code  
17 involved, so I don't have any background on that.

18 Q Okay. So, do you see box 2, it says cross-file  
19 with related files?

10:45AM 20 A Yes.

21 Q What is that box for?

22 A That would be an opportunity for the case agent to  
23 cross-file this particular report either to the confidential  
24 informant file or to another investigation that might be  
10:45AM 25 related to the, to the case at hand.

Kasprzyk - Direct - Tripi

10:45AM 1 Q So if, if this particular report related to other  
2 investigations, this is the space to list those in?

3 A Correct.

4 Q If this report related to a confidential source or  
10:45AM 5 informant, this is the place to list that at?

6 A Correct.

7 Q And here it's blank?

8 A That's right.

9 Q Okay. If we can zoom out of that.

10:46AM 10 I want to focus on boxes 9 and 10 now.

11 Can you talk us through, first, box 9 there, what  
12 that box means and what's listed there?

13 A Box 9 is other officers. So, anyone that might  
14 have been involved in the investigation that was detailed in  
10:46AM 15 this particular report of investigation, they would be listed  
16 in there as "other officers".

17 And number 10 is a report regarding -- and that is  
18 a, just a brief summary or highlight of what it is that the  
19 report's about.

10:46AM 20 MR. TRIPI: We can zoom out of that, please.

21 Q I'd like to now take you down to boxes -- if we  
22 could highlight boxes 11, 12, the whole bottom there -- can  
23 you talk us through and describe box 11 through 15, please.

24 A Box 11 would be -- would indicate any distribution.

10:47AM 25 So if this report was sent anywhere else, it would be listed

Kasprzyk - Direct - Tripi

10:47AM 1 in box 11.

2 Q So, let me just put a finer point on that. If

3 there were an investigative interest by some other DEA office

4 or some other entity that had an investigative interest,

10:47AM 5 there was a space to list that there?

6 A Correct.

7 Q Please continue.

8 A Box 12 is the agent's name and signature who

9 prepared the report.

10:47AM 10 Box 13 is the date that the report was prepared.

11 Box 14 is the name and the title and signature of

12 the supervisor that approved the report.

13 And Box 15 is the date that that happened.

14 MR. TRIPI: Okay. If we can zoom out of that, please.

10:47AM 15 Ms. Champoux if we can go to, we're going to go to Page

16 2 first. At the end of the report I want to show you --

17 highlight the indexing, section, please.

18 Q Can you tell us what the index section is, please.

19 A The indexing section is an area of the report which

10:48AM 20 documents the name of the individual that's listed in the

21 report and it also -- in this case it says NADDIS number

22 pending.

23 NADDIS is a system within DEA that records all

24 information on suspected drug traffickers and/or individuals

10:48AM 25 that have information on drug trafficking that can be named.

Kasprzyk - Direct - Tripi

10:48AM 1 That, that would be in our NADDIS system.

2 Q So, in other words, if someone had a prior DEA  
3 case, NADDIS would have some information about a prior DEA  
4 case and that information could be written in this indexing  
10:48AM 5 section?

6 A Correct.

7 Q Do you know what "NADDIS pending" means?

8 A That -- that would indicate that Joe would have  
9 checked NADDIS, looked for a number, couldn't find that  
10:49AM 10 number and that that number was pending. So a number was to  
11 be given to Peter Gerace.

12 Q And, thus, "pending" means there's no additional  
13 information to write in this box at this time?

14 A Correct.

10:49AM 15 MR. TRIPI: Okay. Zoom out of that, please. Can we go  
16 back to Page 1.

17 Q So, just -- Mr. Bongiovanni authored this document,  
18 correct?

19 A Yes, sir.

10:49AM 20 Q You did not request this document, did you?

21 A No.

22 Q Did you know that it was being written prior to him  
23 submitting it to you?

24 A I don't recall having specific information that he  
10:49AM 25 was writing it prior to it coming to me, no.

Kasprzyk - Direct - Tripi

10:49AM 1 Q And those signature blocks, is that your signature  
2 on Box 14 for the approval?  
3 A Yes, sir, it is.  
4 Q And is that Mr. Bongiovanni for the agent  
10:50AM 5 signature?  
6 A Yes.  
7 Q Whose job was is to make sure the details of this  
8 report were accurate?  
9 A Agent Bongiovanni, Joe Bongiovanni.  
10:50AM 10 Q Okay. Let's start with Paragraph 1 for a moment.  
11 Can you read what Paragraph 1 says?  
12 A "Reference is made to all other DEA-6 reports of  
13 investigation written to this case/file".  
14 Q So who would have authored that line?  
10:50AM 15 A That would have been Joe Bongiovanni.  
16 Q So that's not something that's autofilled in,  
17 correct?  
18 A No.  
19 Q That's something that's typed in by the agent?  
10:50AM 20 A Correct.  
21 Q And as the reviewer, what does that mean to you?  
22 A That there are other reports written to this  
23 particular case file that would be referenced as a part of  
24 this investigation. So there would be some sort of  
10:51AM 25 connection between this individual's information or potential

Kasprzyk - Direct - Tripi

10:51AM 1 information and the Matthew Scalia file.

2 Q Now, do you go back and look through all the other  
3 reports in the investigation in the Matthew Scalia file to  
4 get more specifics?

10:51AM 5 A No.

6 MR. TRIPI: Okay. Let's move on to Paragraph 2. If we  
7 could zoom out of that, please.

8 Q Can you read out loud for the jury Paragraph 2 and  
9 then I want to follow up with some questions about it.

10:51AM 10 A "On November 1st, 2009, SA Joseph Bongiovanni  
11 received a telephone call from Peter G. Gerace. Gerace has  
12 acted as a confidential source and has been able to provide  
13 information regarding the individuals in this case file and  
14 other narcotic investigation in the past. It should be known  
10:52AM 15 that Gerace is presently on federal parole and supervised  
16 release."

17 Q Let me stop you there for a moment.

18 Now, the term is used "Gerace has acted as a  
19 confidential source and has been able to provide  
10:52AM 20 information", and the sentence continues; do you see that?

21 A I do.

22 Q But DEA policy was to reference a confidential  
23 source by number, is that correct?

24 A Correct.

10:52AM 25 Q And then earlier you talked about going on to the

Kasprzyk - Direct - Tripi

10:52AM 1 next sentence where it talks about him being on federal  
2 parole and supervised release; do you see that?

3 A Yes, sir, I do.

4 Q Earlier you talked about approvals that need to be  
10:53AM 5 done before someone could be utilized as a confidential  
6 source while on federal -- as it's written here -- federal  
7 parole and supervised release?

8 A Yes, sir.

9 Q At any point prior to you seeing this report, did  
10:53AM 10 the defendant ever come to you and say: Hey, I know a guy  
11 Peter Gerace, he's on supervised release, we'd like to work  
12 with him while on supervised release?

13 A No, sir.

14 Q So that never happened?

10:53AM 15 A That never happened.

16 Q Okay. Please continue. I think you were about to  
17 start the "at this time" sentence. Please read further.

18 A "At this time Gerace advised SA Bongiovanni that  
19 United States Probation Officer Peter Lepiane and agents of  
10:53AM 20 the FBI initiated a search of Pharaoh's Gentlemen's Club  
21 located at 23 Aero Drive in Cheektowaga, New York on or about  
22 October 31st, 2009. (It should be known that Gerace is  
23 associated with Pharaoh's Gentlemen's Club)".

24 Q Prior to this report being presented to you, did  
10:54AM 25 you have any familiarity with Peter Gerace being a

Kasprzyk - Direct - Tripi

10:54AM 1 confidential source for the DEA?

2 A I did not.

3 Q To your knowledge, was Peter Gerace ever a  
4 confidential source with the DEA while you were there?

10:54AM 5 A To my knowledge, no.

6 Q Prior to this report did Mr. Bongiovanni ever come  
7 up to you and tell you he's a source of information for me?

8 A He did not.

9 Q So is this report the first instance you're hearing  
10:54AM 10 the name "Peter Gerace" connected to this situation that's  
11 being described in the report?

12 A Yes, sir.

13 Q Is this the first time you're hearing the name  
14 Peter Gerace connected to the defendant in any way?

10:55AM 15 A Yes.

16 Q Outside the framework of this report, did you and  
17 the defendant have any side conversations where he told you:  
18 I'm childhood friends with Peter Gerace?

19 A No, sir.

10:55AM 20 Q Outside the of context of this report, did he ever  
21 tell you: I've been to Peter Gerace's club?

22 A No, sir.

23 Q Had any of that information been provided to you,  
24 would you have scrutinized this report more closely?

10:55AM 25 A Yes, sir.

Kasprzyk - Direct - Tripi

10:55AM 1 Q Would you have approved the defendant operating any  
2 way, shape or form with Peter Gerace as a confidential  
3 source?

4 A No, sir.

10:55AM 5 Q Would you have approved in any way, shape, or form  
6 the defendant continuing with Peter Gerace -- withdrawn --  
7 the defendant operating a source of information named Peter  
8 Gerace?

9 A Had I known that relationship?

10:55AM 10 Q Correct.

11 A No, sir.

12 Q Whose job would it have been to alert you to that  
13 relationship?

14 A Joe Bongiovanni.

10:56AM 15 Q I'd like to go to Paragraph 3, please.

16 Can you read that paragraph out loud for the jury,  
17 please.

18 A "Gerace advised SA Bongiovanni that he was  
19 administered a urine test to detect the presence of narcotics  
10:56AM 20 in his urine. Gerace advised SA Bongiovanni that he failed  
21 the urine test due to the presence of trace amounts of  
22 cocaine detected in his urine. Gerace advised SA Bongiovanni  
23 that he believed he had now violated his term of supervised  
24 release. Gerace stated that he was prepared to offer

10:56AM 25 information regarding individuals who are trafficking in

Kasprzyk - Direct - Tripi

10:56AM 1 narcotics in the Buffalo area. Gerace stated he wanted to  
2 offer this information in lieu of consideration on this  
3 pending supervised release violation due to the failed urine  
4 test."

10:57AM 5 Q What did you understand the defendant to be  
6 documenting in this paragraph?

7 A That Mr. Gerace would like to work --

8 MR. SINGER: Your Honor, object to what the witness  
9 understands. The words speak for themselves.

10:57AM 10 THE COURT: Sustained.

11 MR. TRIPI: A may I make a brief argument on that?

12 THE COURT: Sure. Go ahead.

13 MR. TRIPI: He's the supervisor who signed off on the  
14 report. I think his understanding has some relevance, your  
10:57AM 15 Honor.

16 THE COURT: Well, what he understood I think is fine.

17 MR. TRIPI: That was the question.

18 THE COURT: No, I think the question is what he  
19 understood Mr. Bongiovanni to mean by it.

10:57AM 20 MR. TRIPI: I can rephrase it, Judge.

21 THE COURT: Sure.

22 Q What was your understanding of this paragraph as  
23 you reviewed it?

24 A That Peter Gerace had -- or there was the potential  
10:58AM 25 of a violation by U.S. Probation against Mr. Gerace and that

Kasprzyk - Direct - Tripi

10:58AM 1 Mr. Gerace had reached out to Joe Bongiovanni and was  
2 attempting to work for the DEA as a confidential informant or  
3 source of information and take that information and use it to  
4 weigh up against his potential or pending probation  
10:58AM 5 violation.

6 Q Was becoming involved in Gerace's potential  
7 probation violation something you directed the defendant to  
8 do or something the defendant did on his own?

9 MR. SINGER: Object to the form of the question.

10:58AM 10 THE COURT: Overruled.

11 MR. TRIPI: There's nothing improper about that.

12 THE COURT: Overruled.

13 A Joe Bongiovanni brought this information to me --

14 Q Okay.

10:58AM 15 A -- on his own. I didn't -- I didn't direct him to  
16 do this. He brought this to me as part of the conversation  
17 he had with me.

18 Q Was it your understanding that through this report  
19 Mr. Bongiovanni claimed that Mr. Gerace was offering to  
10:59AM 20 cooperate with the DEA?

21 A Yes, sir.

22 MR. SINGER: Objection, same objection, Judge.

23 THE COURT: Overruled.

24 Q Was information about drug traffickers something  
10:59AM 25 the DEA would have considered valuable?

Kasprzyk - Direct - Tripi

10:59AM 1 A Yes, sir.

2 Q I would like to move on to Paragraph 4. If you  
3 could read that out loud.

4 A "On November 2nd, 2009, Gerace arrived at the DEA  
10:59AM 5 Buffalo resident office and spoke briefly to SA Bongiovanni.  
6 Gerace stated that he knew significant cocaine traffickers  
7 capable of moving kilo quantities of cocaine out of various  
8 distribution houses located in the North Buffalo and South  
9 Buffalo areas. Gerace stated that he would not offer  
11:00AM 10 additional information until he received a good faith  
11 commitment from United States Probation Officer Lepiane that  
12 he would receive consideration on his violation in lieu of  
13 information he is willing to provide."

14 Q Where it states "Gerace stated that he knew  
11:00AM 15 significant cocaine traffickers capable of moving kilo  
16 quantities of cocaine" -- and I'll stop it there -- what was  
17 your understanding of what that meant?

18 A To me, that meant that Peter Gerace had information  
19 on a Drug Trafficking Organization that was moving kilogram  
11:00AM 20 quantities of cocaine in Western New York. That would be  
21 information that the DEA would find valuable.

22 Q In your experience, are those who knew significant  
23 cocaine traffickers capable of moving kilo quantities of  
24 cocaine, are those individuals who know people like that,  
11:01AM 25 typically themselves involved in drug trafficking at a high

Kasprzyk - Direct - Tripi

11:01AM 1 level?

2 **MR. SINGER:** Object to the foundation.

3 **THE COURT:** Overruled.

4 A Typically, yes.

11:01AM 5 **Q** Given this context and the information the

6 defendant wrote in this report, would Gerace have been

7 someone the DEA would have wanted to investigate if he had

8 not been purporting to cooperate, as Bongiovanni wrote in

9 this report?

11:01AM 10 A Yes, sir.

11 **THE COURT:** Mr. Tripi, good place for a break now?

12 **MR. TRIPI:** Yes, Judge, this is a good spot.

13 **THE COURT:** Okay.

14 **MR. TRIPI:** Thank you.

11:01AM 15 **THE COURT:** So let's take our morning break now.

16 Please remember my instructions about not communicating

17 about the case with anyone, including each other, and not

18 making up your mind.

19 See you back here in about 10 or 15 minutes.

11:02AM 20 **(WHEREUPON, jury excused.)**

21 **THE COURT:** Anything for the record before we break?

22 **MR. TRIPI:** No, your Honor.

23 **MR. SINGER:** Not from me, Judge.

24 **THE COURT:** Okay. We'll see you in a few minutes.

11:02AM 25 **(WHEREUPON, recess taken.)**

Kasprzyk - Direct - Tripi

11:02AM 1 (Open court, defendant present:)

2 **THE CLERK:** Back on the record. Case number 19-CR-277,

3 United States of America v. Joseph Bongiovanni.

4 All counsel and parties are present.

11:18AM 5 **THE COURT:** Okay. Anything for the record, Mr. Tripi?

6 **MR. TRIPI:** No, your Honor.

7 **THE COURT:** Anything from the defense?

8 **MR. MacKAY:** No.

9 **THE COURT:** So we'll go until 12:15, 12:30, convenient

11:18AM 10 spot to break.

11 How much longer?

12 **MR. TRIPI:** I think this witness direct will probably

13 take us till the lunch break probably cross right after.

14 **THE COURT:** Okay, terrific. So we'll do that.

11:18AM 15 And then I'm also going to tell the jury that next week

16 we are probably going to break late for lunch. We'll break

17 for lunch but we're going to break late for lunch, probably

18 some time around 1:30 or so every day because I have

19 something I have to take care around 2:00 o'clock, okay?

11:19AM 20 **MR. TRIPI:** Thank you, your Honor.

21 **THE COURT:** Okay, let's bring them in, Pat, please.

22 (WHEREUPON, jury present.)

23 **THE COURT:** The record will reflect that all our jurors

24 again are present.

11:20AM 25 Folks, we'll go until some time between 12 and 12:30,

Kasprzyk - Direct - Tripi

11:20AM 1 break for lunch for about an hour and then resume.  
2 Just so you know for planning purposes, next week our  
3 lunch brakes are going to be later than usual. They'll be  
4 between 1:30 and 2 o'clock generally and we'll break for an  
11:20AM 5 hour around then because I have something I need to do about  
6 2 o'clock every day next week, okay.  
7 I remind the witness that he's still under oath.  
8 And you may continue, Mr. Tripi.  
9 **MR. TRIPI:** Thank you, your Honor.  
11:20AM 10 Ms. Champoux, can we pull the exhibit back up. We had  
11 Paragraph 49 up.  
12 **Q** Looking at this paragraph, again, see that first  
13 sentence there "on November 2nd, 2009, Gerace arrived at the  
14 DEA Buffalo resident office and spoke briefly to SA  
11:21AM 15 Bongiovanni", do you see that sentence?  
16 **A** Yes, sir.  
17 **Q** Now, that date, November 2nd, 2009, that's four  
18 days before you signed off on and reviewed this report,  
19 correct?  
11:21AM 20 **A** Correct.  
21 **Q** Now, at that time per DEA policy, if an interview  
22 was going to be conducted by a DEA agent in the office, was  
23 there supposed to be a witness to that interview?  
24 **A** Yes, sir.  
11:21AM 25 **Q** Does this paragraph reference any witness to any

Kasprzyk - Direct - Tripi

11:21AM 1 interaction with a Gerace had with Bongiovanni?

2 A No, it does not.

3 Q As per DEA policy, are a witness and supervisor  
4 supposed to be present for those initial confidential source  
11:21AM 5 debriefings you talked about earlier?

6 A Yes, sir.

7 Q Does this paragraph reference any witness or  
8 supervisor who was present for a debriefing of Gerace?

9 A It does not.

11:22AM 10 Q And just to make the record clear, you were not  
11 present for a conversation as the defendant's group  
12 supervisor, November 2nd, 2009, when Gerace arrived at the  
13 DEA Buffalo resident office, correct?

14 A I was not.

11:22AM 15 Q And other than the defendant writing that, do you  
16 have any information other than the written words on this  
17 page that that actually happened?

18 A No, sir, I do not.

19 Q Were you invited to a meeting between Gerace and  
11:22AM 20 the defendant on November 2nd, 2009, and just didn't go?

21 A No, sir, I was not.

22 Q So, do you have any personal knowledge that a  
23 meeting actually happened between Gerace and Bongiovanni on  
24 November 2nd, 2009?

11:23AM 25 MR. SINGER: Objection. Asked and answered.

Kasprzyk - Direct - Tripi

11:23AM 1 **THE COURT:** Overruled.

2 A I do not.

3 **Q** Okay. I think we've already looked at the rest of  
4 that paragraph, so we're going to move on to Paragraph 5.

11:23AM 5 Can you read for the record and for the jury, can  
6 you read Paragraph 5 out loud and then I'll ask you some  
7 questions.

8 A "Later on that same day, SA Bongiovanni reported  
9 this information to G S Kasprzyk of the Buffalo resident  
11:23AM 10 office. GS Kasprzyk contacted FBI GS James Jansewicz to  
11 better understand the FBI's interest in Gerace as well as  
12 their participation in the search at the Pharaoh's club. FBI  
13 GS Jansewicz stated that the FBI was very interested in  
14 interviewing Gerace on various issues regarding the Pharaoh's  
11:24AM 15 club and other FBI investigations."

16 **Q** Okay. Now, did there come a time when you, in  
17 fact, called FBI Group Supervisor Jansewicz?

18 A I did.

19 **Q** Can you describe that -- how -- what triggered you  
11:24AM 20 making that phone call?

21 A My conversation with Joe led me to call Jim  
22 Jansewicz from the FBI and explain to him the information  
23 that Joe Bongiovanni had provided to me regarding Mr. Gerace.

24 **Q** And that's the information that we just read in  
11:24AM 25 Paragraph 4?

Kasprzyk - Direct - Tripi

11:24AM

1 A Correct.

2 Q And just to make it clear, who is FBI Group  
3 Supervisor James Jansewicz?

11:24AM

4 A Jim Jansewicz is a FBI Group Supervisor. At the  
5 time he managed the FBI Safe Streets Task Force. That is an  
6 FBI group that also is involved in the investigation of drug  
7 trafficking crimes. So that group, his group, the Safe  
8 Streets group, and the DEA office often worked together on  
9 overlapping investigations.

11:25AM

10 Q So why did you call Mr. Jansewicz after the  
11 defendant advised you of information related to Gerace and  
12 probation search of Pharaoh's?

11:25AM

13 A I knew from my conversation with Joe Bongiovanni  
14 that the FBI was involved with the search at Pharaoh's and  
15 with the incident with the probation officer. So based on  
16 that information, I wanted to call Jim and talk to him about  
17 his interest in Gerace and his interest in Pharaoh's.

18 Q Did you believe the FBI, based on that, FBI had  
19 significant interest in Gerace?

11:26AM

20 A After my discussion with Jim, Jim told me they had  
21 interest in Gerace and they were -- would like to talk to him  
22 as part of their investigation.

23 Q Is that sort of interagency office sharing  
24 important?

11:26AM

25 A Yes, sir.

Kasprzyk - Direct - Tripi

11:26AM 1 Q Is that a way to de-conflict?  
2 A Yes, sir.  
3 Q After you spoke to Jansewicz, what did you, what if  
4 anything did you say or direct the defendant to do based on  
11:26AM 5 that conversation?  
6 A I directed Joe Bongiovanni to contact Jim Jansewicz  
7 in the FBI office and make arrangements to have them meet  
8 with Gerace and determine his potential suitability to be a  
9 source of information or confidential source.  
11:27AM 10 Q Did you direct him to make sure that occurred?  
11 A I asked him to, to handle that, yes.  
12 Q Was that to insure that the FBI spoke directly with  
13 Gerace about the drug trafficking information that was  
14 referenced in this report?  
11:27AM 15 A Correct.  
16 Q If after your discussion with the FBI supervisor,  
17 you had learned the FBI was not interested in working with  
18 Peter Gerace, what would you have directed the defendant to  
19 do as it related to Gerace?  
11:27AM 20 A Had I known that, I would have done an internal  
21 assessment as to whether or not we could potentially, at the  
22 DEA, open up Gerace as a confidential informant.  
23 Q And if you learned that someone like Gerace was not  
24 interested in cooperating with the DEA or anyone else, would  
11:28AM 25 you have directed an investigation of Gerace?

Kasprzyk - Direct - Tripi

11:28AM 1 A Yes.

2 Q What did you expect the defendant to do coming out  
3 of your conversation with him after you spoke to Jansewicz?

4 A I expected him to contact Group Supervisor

11:28AM 5 Jansewicz at the FBI and arrange for a meeting between Gerace  
6 and the FBI to discuss any information that Gerace might be  
7 able to provide on drug traffickers in the Western New York  
8 area.

9 Q Could we look at Paragraph 6, please. And could

11:29AM 10 we -- could you read that first sentence of Paragraph 6.

11 A "GS Kasprzyk instructed SA Bongiovanni to set up an  
12 interview with Gerace and FBI agents in the near future."

13 Q Is that what you just told this jury you directed  
14 him to do?

11:29AM 15 A Yes, sir.

16 Q Is that consistent with what your instruction was?

17 A Yes, it is.

18 Q Did the defendant ever tell you that he actually  
19 set up an interview with Gerace and the FBI?

11:29AM 20 A He said to me that he was planning to do that but I  
21 have no recollection of him actually having that meeting with  
22 the FBI.

23 Q No recollection of him coming back and reporting  
24 that he had that meeting?

11:29AM 25 A Correct. He never came back to me to say that he

Kasprzyk - Direct - Tripi

11:29AM 1 had that meeting and this is what happened.

2 Q Did he ever present to you a report documenting  
3 what transpired with a meeting between Gerace and the FBI for  
4 you to review and approve like this report?

11:30AM 5 A He did not.

6 Q At any point did the defendant say: Hey, I can't  
7 work on anything involving Gerace, I'm childhood friends, I  
8 need to recuse myself?

9 A He did not.

11:30AM 10 Q Going back to the first paragraph for a moment.

11 I mean the second paragraph, I'm sorry.

12 In that first sentence, the defendant wrote: "On  
13 November 1st, 2009, SA Joseph Bongiovanni received a phone  
14 call from Peter G. Gerace." Is that accurate?

11:31AM 15 A That's accurate.

16 Q Anywhere in this report did the defendant document  
17 a phone number where any other agent could get in touch with  
18 Peter Gerace?

19 A No, sir.

11:31AM 20 Q Can we go to the second page of the indexing  
21 section: Is the indexing portion of a DEA-6 a place where  
22 agents should document things like phone numbers?

23 A Yes, sir.

24 Q Is there any phone number for Peter Gerace written  
11:31AM 25 in the indexing section?

Kasprzyk - Direct - Tripi

11:31AM 1 A No, sir.  
2 Q During 2009, during this timeframe that we're  
3 talking about, did agents in your group have weekly meetings  
4 with each other?

11:31AM 5 A Yes, sir.

6 Q Was that something that you made sure happened  
7 weekly?

8 A Yes, sir, that was a meeting that was organized by  
9 me as the group supervisor.

11:32AM 10 Q What was the purpose of having weekly meetings  
11 within the group?

12 A It would be an opportunity for the agents and the  
13 task force officers to talk about their case investigations,  
14 the progress of those case investigations, opportunities for  
11:32AM 15 us to talk through different techniques that we might use to  
16 help each other with investigations. That was really the  
17 tone of those meetings.

18 Q Did the defendant ever report back to you in any of  
19 those meetings that he had set up an interview with Gerace  
11:32AM 20 and the FBI and that it had occurred?

21 A Not that I recall.

22 Q Do you recall the defendant ever mentioning that he  
23 passed Gerace off to the FBI for them to work him as a  
24 source?

11:32AM 25 A No.

Kasprzyk - Direct - Tripi

11:33AM 1 Q Did you think much of this particular report after  
2 this one day that you reviewed and signed it?

3 A At the time?

4 Q Yeah.

11:33AM 5 A No.

6 Q Did you move on to other things?

7 A Yes, sir.

8 Q Whose responsibility is it to follow up in this  
9 type of situation?

11:33AM 10 A The author of the report, Joe Bongiovanni.

11 Q If you had learned the FBI wasn't going to be using  
12 Gerace, based upon the information this defendant wrote in  
13 the report, do you believe and would you have assessed that  
14 the DEA could have attempted to use him to further a kilogram  
11:33AM 15 level cocaine investigation?

16 A Yes.

17 Q But nothing like that ever happened, did it?

18 A Correct, that did not happen.

19 **MR. TRIPI:** We can take that down, Ms. Champoux.

11:34AM 20 Q I'd like to change gears a little bit.

21 Are you familiar with the way that funding requests  
22 for enforcement actions are handled within the context of the  
23 DEA Buffalo Resident Office?

24 A Yes, sir.

11:34AM 25 Q And earlier you said as the RAC, you're in charge

Kasprzyk - Direct - Tripi

11:34AM 1 of the budget?

2 A Correct.

3 Q Not to get too administrative here, but I think we  
4 need to follow up and ask what types of things does the DEA

11:34AM 5 have to pay for out of its budget, just general categories?

6 A So, generally, out of our budget we would authorize  
7 funds to pay for controlled buys. We would authorize funds  
8 to pay for informant information. I would also have to  
9 authorize funds to pay for technology services. If we were

11:35AM 10 working with phone companies and having to pay for pen  
11 registers and/or wiretaps, those funds would come out of our,  
12 our budget. So those would be some of the categories that I  
13 would manage as the RAC.

14 Q Okay. Just to, just to break that down a little  
11:35AM 15 bit.

16 If the DEA wants to utilize a confidential source  
17 to buy drugs from a member or an associate of a drug  
18 organization, that takes money, correct?

19 A Correct.

11:35AM 20 Q And in those types of operations, which you've  
21 described what they are earlier, the DEA provides the funds  
22 to conduct those purchases of drugs?

23 A That's correct, sir.

24 Q And that happens in a controlled setting?

11:35AM 25 A Correct.

Kasprzyk - Direct - Tripi

11:35AM 1 Q And as the supervisor, the RAC, you're ultimately  
2 responsible for ensuring those funds are available?

3 A Correct.

4 Q If someone wants to make a -- if an agent, not just  
11:36AM 5 someone -- if an agent wants to make a controlled evidence  
6 purchase of drugs from a target that's associated with a drug  
7 organization, tell the jury what the steps of the process  
8 would be.

9 A Well, initially they would have to open up a case  
11:36AM 10 investigation, a case file. And that would require the agent  
11 to collect as much information as they could on the target of  
12 their investigation. That would be documented in the case  
13 initiation file.

14 Once the case is opened and it's appropriately  
11:36AM 15 given a case number and a G-DEP identifier, they would then  
16 use a confidential informant -- a documented confidential  
17 informant -- to infiltrate that organization and conduct a  
18 controlled buy.

19 Q And I'd like to focus in on the part of making the  
11:37AM 20 funding request. How does that occur, how does that roll  
21 through the office?

22 A When the agent is working with that confidential  
23 informant and develops information to make a controlled buy,  
24 that information is documented on a DEA operational plan.  
11:37AM 25 That operational plan is prepared in such a way that it

Kasprzyk - Direct - Tripi

11:37AM 1 details the -- how the buy is going to go, who the buy is  
2 going to be from, the amount of the buy, where it's going to  
3 occur. All of those details are listed in the operational  
4 plan.

11:37AM 5 In addition to the operational plan, there's also a  
6 DEA-12 that is submitted at the same time as the operational  
7 plan. And the DEA-12 would list out the amount of funds that  
8 are being requested by the agent to complete the buy.

9 Q And then who does that paperwork get submitted to?

11:37AM 10 A Initially the agent would submit it to the Group  
11 Supervisor. Once it's signed off by the Group Supervisor, it  
12 would go to the RAC and then once it's signed off by the RAC,  
13 the case would go to the ASAC for final approval.

14 Q Who's responsible for initiating the law  
11:38AM 15 enforcement action that would be subject to the operational  
16 plan?

17 A That would be the case agent.

18 Q Who's responsible for writing the words contained  
19 in the operational plan?

11:38AM 20 A Generally it's the case agent.

21 Q And who -- at what point are funds requested in  
22 that process?

23 A Once the ops -- once the operational plan is  
24 submitted to the Group Supervisor, along with the DEA-12,  
11:38AM 25 that initiates the process to request the funding.

Kasprzyk - Direct - Tripi

11:38AM 1 Q Based upon your -- the way you practiced in the  
2 office and in your history reviewing these things, are  
3 operational plans landing on your desk without you having any  
4 awareness they're coming or are there conversations that are  
11:39AM 5 had between the RAC level and the Group Supervisor level?  
6 Can you explain that for the jury?

7 A Yes. When I was the group supervisor, you would  
8 have conversations with the case agent about the controlled  
9 buy. And those conversations are often detailed where we  
11:39AM 10 would discuss the buy itself and how the buy was going to go  
11 and the amount of the buy and the reason for the buy.

12 When it was approved by the group supervisor and  
13 brought up to the RAC -- when I became the RAC -- there would  
14 be less conversation. I, I would meet with the group  
11:39AM 15 supervisor and I would learn about the case from the group  
16 supervisor and allow them to provide to me the facts of the  
17 investigation. I normally would not meet with the agent to  
18 verify all of what was happening.

19 Q Does the group supervisor reinvestigate everything  
11:40AM 20 the agent writes in the operational plan?

21 A He does not.

22 Q Does the RAC reinvestigate all the words written in  
23 the operational plan?

24 A They do not.

11:40AM 25 Q Does the group supervisor and the RAC reply upon

Kasprzyk - Direct - Tripi

11:40AM 1 the case agent who's the handler of the informant?

2 A Yes.

3 Q As the RAC at the point where you sign off, are  
4 you -- do you at that point in the process have an awareness  
11:40AM 5 that funds will be available and approved by the ASAC above  
6 you?

7 A Yes, sir.

8 Q And what is an ASAC? Just talk about how it goes  
9 after the RAC level, please.

11:40AM 10 A So the RAC is the resident agent in charge. The  
11 ASAC is the Assistant Special Agent in Charge. The ASAC, in  
12 our case, the ASAC sat in Albany and that was a district  
13 office at the time and the ASAC had responsibility for  
14 Albany, Syracuse, Rochester, and Buffalo. So all of the RACs  
11:41AM 15 in those cities would report to the ASAC.

16 Q And are there varying levels of funding requests in  
17 the context of controlled buys in terms of dollar amounts?

18 A Yes, sir.

19 Q Just to give the jury an idea of a range. What  
11:41AM 20 would be sort of a high fund requesting and what would be  
21 sort of a lower, more routine level funding request?

22 A Generally anything under \$5,000 would be a routine  
23 funding request. Amounts in excess of 5,000, 10,000, 15 or  
24 20 would be a higher level funding request.

11:41AM 25 Q And in your experience for those \$5,000 or less

Kasprzyk - Direct - Tripi

11:41AM 1 funding requests, once you were the group supervisor and then  
2 later a RAC, was there ever much trouble getting money for  
3 those types of levels?

4 A For the most part, no. We, we knew what our budget  
11:42AM 5 was at the Buffalo office and generally we tried to work  
6 within that budget.

7 Q As the RAC, in terms of your general practice by  
8 the time you were the RAC, by the time a funding request for  
9 a controlled buy reaches your desk and you're signing off,  
11:42AM 10 have you already had a conversation with the ASAC who has to  
11 ultimately sign off about that?

12 A Typically, yes.

13 Q And what would the general topic of conversation be  
14 that would cause you to sign off?

11:42AM 15 A The conversation with the ASAC?

16 Q Yeah.

17 A Typically I would talk with him or her about the  
18 case itself and the need to do the buy and I would validate  
19 that we had funds available to do the buy. The ASAC would  
11:42AM 20 always ask me was the safety plan, the operational plan  
21 prepared and they would ask that we would send it to them for  
22 review and approval.

23 Q And are there times when everything's set to go,  
24 you've had that conversation with the ASAC and then a buy  
11:43AM 25 doesn't go for whatever reason?

Kasprzyk - Direct - Tripi

11:43AM 1 A Yes, sir.

2 Q Is that a situation where you don't send the final  
3 paperwork to the ASAC because you've learned additional  
4 information after that phone call that a buy is not going to  
11:43AM 5 go for whatever reason?

6 A Correct. If the, if the buy was delayed or not  
7 going to happen, we would not push that final approval to the  
8 ASAC because there would be no need to pull out the money.

9 Q And who -- what do you mean by we wouldn't push  
11:43AM 10 that final approval to the ASAC?

11 A My -- either myself or my aide would not send that  
12 operational plan and the 12 -- the DEA-12 -- to the final  
13 ASAC for final approval because there would be no need to  
14 pull out the funds for the operation.

11:44AM 15 Q Because you know the operation is not going  
16 forward?

17 A Correct.

18 Q And who advises you as the RAC that the operation  
19 is not going forward?

11:44AM 20 A Typically it would be the GS.

21 Q And who advises the group supervisor?

22 A The case agent.

23 Q And who's responsible on making the call on whether  
24 the operation goes forward?

11:44AM 25 A The case agent.

Kasprzyk - Direct - Tripi

11:44AM 1 Q I'd like to hand you up Government Exhibit 8A.  
2 8A-7 -- sorry. For the record, it's 8A-7?

3 THE WITNESS: Yes, sir.

4 MR. TRIPI: Judge, we don't have a copy for Court so we  
11:44AM 5 can display it for you? This is something marked today.

6 THE COURT: It was just marked today?

7 MR. TRIPI: Yes. Yeah, it was marked today so it's not  
8 in your binder. I apologize.

9 THE CLERK: Yes, it is.

11:44AM 10 THE COURT: It is in my binder?

11 THE CLERK: Ms. Champoux gave it to me.

12 MR. TRIPI: My fault, Judge. Everyone's ahead of me.

13 Q If you could please look at that document, it's a  
14 multipage document and just when you're done, just look up.

11:45AM 15 Do you recognize that multipage document which is  
16 marked Government Exhibit 8A-7?

17 A I do.

18 Q What do you recognize that to be?

19 A This is a DEA safety plan, otherwise known as an  
11:45AM 20 operational plan, that documents an enforcement operation  
21 that was to occur.

22 Q And sort of last page of that operational plan,  
23 what is that?

24 A The last page is a copy of a DEA-12. This is a  
11:46AM 25 document that is used by an agent to withdraw funds to

Kasprzyk - Direct - Tripi

11:46AM 1 facilitate a controlled buy.

2 Q And that multipage exhibit which consists of a  
3 five-page operational plan and a one-page DEA-12, are those  
4 documents comprised in that exhibit documents that are made  
11:46AM 5 in the ordinary course of DEA business?

6 A Yes, sir.

7 Q Is it the regular course of DEA business to make  
8 and keep those records?

9 A Yes, sir.

11:46AM 10 Q Are the entries made at or near the time of the  
11 events that are reported in those records?

12 A Yes.

13 Q Is the person under an obligation to do -- under an  
14 obligation to do so accurately?

11:46AM 15 A Correct.

16 MR. TRIPI: Government offers Exhibit 8A-7, your Honor.  
17 I also anticipate this will come in later as a part of the  
18 larger Exhibit 8A. It's just a subexhibit.

19 MR. SINGER: No objection.

11:47AM 20 THE COURT: Okay. It's received without objection.  
21 (WHEREUPON, Government Exhibit 8A-7 received.)

22 MR. TRIPI: Okay, so we can publish it for the jury, if  
23 that's okay.

24 THE CLERK: You're all set.

11:47AM 25 MR. TRIPI: Thank you very much.

Kasprzyk - Direct - Tripi

11:47AM 1 Q Just to orient the jury to what they're looking at.  
2 At the very top there's a number there: C2130026. What is  
3 that?

4 A That's the DEA case number that references this  
11:47AM 5 investigation.

6 Q And under that it says the word "safety plan". Is  
7 that what you've been referring to as an operational plan?

8 A Yes, sir.

9 Q And can you -- I'll jump in with a couple questions  
11:47AM 10 but just to sort of move this along a little bit, can you  
11 just go through each of the boxes and tell the jury what they  
12 are. Maybe go through the first five and then I'll follow  
13 up.

14 A The date of the operation is listed up at the top  
11:47AM 15 under Box 2. That's May 6th, 2013 at 6 p.m.

16 Location of the operation. That would be the area  
17 where the controlled buy was going to happen. In this case,  
18 it was 2526 Delaware Avenue, Kelly's Korner Bar.

19 Block 5 lists out the case number, the file title  
11:48AM 20 name, group number, and G-DEP number.

21 Q And the file title in this case is Anderson, comma,  
22 Wayne, or Wayne Anderson?

23 A Correct.

24 MR. TRIPI: We can zoom out of that and highlight maybe  
11:48AM 25 6 through 10. Just go down the page a bit.

Kasprzyk - Direct - Tripi

11:48AM 1 Thanks.

2 A The information in Box 6, the operation type, it's  
3 a buy/walk. This would be a controlled buy where the  
4 informant would make a purchase and bring those drugs back to  
11:48AM 5 the agent. The cash amount would be a thousand dollars. The  
6 agent --

7 Q So let me stop you there.

8 In terms of the cash amount, is this one of those  
9 more so, like, routine level funding requests, a \$1,000 drug  
11:49AM 10 buy?

11 A Yes, sir.

12 Q In terms of your role approving this type of  
13 funding, is this an amount that typically would cause you any  
14 difficulty approving?

11:49AM 15 A No.

16 Q Go on to Box 7, if you could.

17 A Box 7 lists out the case agents.

18 Q Who are the two names there?

19 A SA Joseph Bongiovanni and SA Shane Nastoff.

11:49AM 20 Q Okay. Please continue.

21 A Box 8 lists out the confidential source, the C S.  
22 In this particular operation, the DEA CS number is pending.  
23 And that is --

24 Q So what does that mean, CS number is pending?

11:49AM 25 A That would mean that a confidential informant

Kasprzyk - Direct - Tripi

11:49AM 1 package was submitted for the informant that they're using  
2 and they're waiting to get an actual CS number to attach to  
3 that informant.

4 Q Okay. Please continue.

11:49AM 5 A The beeper, cellular, vehicle type, all that  
6 information is related to the CS himself. In the event  
7 someone needed to contact the CS, that would be his cell  
8 number. And then at the very right side, you'll see "wired".  
9 That means there's a transmitter on the informant which would  
11:50AM 10 allow the surveillance agents the ability to listen, monitor  
11 and record any conversation between the informant and the  
12 target.

13 Q Now I see Box 9 is blank but what would that be  
14 for --

11:50AM 15 A That --

16 Q -- if it were filled in?

17 A That information would document the name of the  
18 undercover operative so if they're -- an undercover is a law  
19 enforcement officer, either a DEA agent or a police officer  
11:50AM 20 that's working in an undercover capacity to purchase  
21 narcotics.

22 MR. TRIPI: Okay. And we can zoom out and just  
23 highlight Box 10, 11, 12, 13, please, at the bottom there.

24 Q If you can go through 10, 11, 12 and 13, please.

11:51AM 25 A 10 are the radio channels that we would use during

Kasprzyk - Direct - Tripi

11:51AM 1 the operation, the DEA radio channels.

2 Flashroll is 11. This is not a flashroll event.

3 Special equipment required. This is pretty

4 standard. We expect every law enforcement officer to have

11:51AM 5 their bulletproof vests, their raid jackets, search kits,  
6 their entry tools, all of that would be available with them  
7 during the controlled buy.

8 The box 13 is our, our distresser signals. We

9 always give the informant or the undercover operative

11:51AM 10 distress signals in the event that the operation goes poorly  
11 and the agent or informant's life is in danger. We would  
12 expect them to use these distress signals to signal to the  
13 surveillance team that they need help.

14 Q And so here verbal is "don't hurt me" and visual is  
11:51AM 15 hands up in the air?

16 A Correct.

17 MR. TRIPI: Zoom out of that, please.

18 Q And then there's some writing at the bottom of the  
19 page there. Can you tell us what that is?

11:52AM 20 A It's hard for me to make -- I believe this is when  
21 the -- it's hard for me to read the letters, to be honest.

22 Q Okay. Do you see where it says "to ALB, 5/2/13"?

23 A Yes.

24 Q Do you know what the "ALB" reference is?

11:52AM 25 A (No response.)

Kasprzyk - Direct - Tripi

11:52AM 1 Q Where did the ASAC sit?

2 A In Albany. Oh. Yeah, "ALB" is most likely Albany.

3 Q So do you know what that reference is?

4 A So that would be --

11:52AM 5 Q If you know?

6 A Well, that reference would typically be that the

7 operational plan and the 12 was sent to Albany for review and

8 approval.

9 Q Do you know who wrote that?

11:52AM 10 A I do not.

11 Q That's not your initials?

12 A No.

13 **MR. TRIPI:** We can zoom out of that.

14 Q I'm going to skip down to Box 18 at this point.

11:53AM 15 And before I ask you to get into the details here,

16 who's responsible for writing all of the words in this safety

17 plan?

18 A That would be the case agent.

19 Q And in this case you saw that was the defendant?

11:53AM 20 A Correct.

21 Q Does that include this narrative in box 18?

22 A Yes, sir.

23 Q And could you read what was written by the

24 defendant in that box?

11:53AM 25 A "On May 6th, 2013, agents from Enforcement Group

Kasprzyk - Direct - Tripi

11:53AM 1 D-57 will monitor a buy/walk between a DEA confidential  
2 source (pending CS number) and T.S. at Kelly's  
3 Korner Bar located at 2526 Delaware Avenue, Buffalo,  
4 New York. The DEA CS will meet S. for the purpose of  
11:54AM 5 purchasing approximately one third ounce of cocaine and also  
6 making a partial payment towards prior debt owed by S.  
7 The CS will also utilize the meeting to negotiate future  
8 cocaine purchases from S. The DEA CS has witnessed  
9 S. and other associates distributing large quantities of  
11:54AM 10 cocaine and marijuana in the recent past. It should be known  
11 that S. is a trusted associate of the Ronald Serio DTO.  
12 According to recent toll analysis of Serio's cellular phone,  
13 S. routinely communicates with Serio and allegedly  
14 organizes the transportation and delivery of cocaine and  
11:54AM 15 marijuana for this Serio DTO."  
16 Q Can I stop you there for a moment.  
17 You mentioned it earlier. What is toll analysis?  
18 A Toll analysis is where you prepare a subpoena, send  
19 that subpoena to a cell company provider, collect information  
11:55AM 20 from that cell provider on all of the numbers used by that  
21 particular cell phone, and then conduct analysis of those  
22 numbers.  
23 Q To see what numbers are communicating with what  
24 other numbers?  
11:55AM 25 A To, to -- to establish organizational links but

Kasprzyk - Direct - Tripi

11:55AM 1 also to obtain subscriber data on all of the different phones  
2 and see who is members of the organization.

3 Q Can you continue, please, reading.

4 A S. had solicited the DEA CS to assist the DTO  
11:55AM 5 by transporting narcotics from New York City" -- I'm sorry,  
6 NYC and in acquiring stash locations for the Serio DTO in the  
7 Buffalo area. DEA agents are coordinating the investigation  
8 with the AUSA, WDNY, the office of the New York State  
9 Attorney General, the New York State Police, the Buffalo FBI,  
11:56AM 10 and the Buffalo IRS and working towards possible wire  
11 intercepts of the Serio DTO."

12 Q Okay. Let me stop you there for a moment.

13 We go back above. There were no personnel from the  
14 FBI, state police or New York State Attorney General's Office  
11:56AM 15 listed as being part of the operational team; is that  
16 correct?

17 A That's correct.

18 MR. TRIPI: Go to the prior page, Ms. Champoux for a  
19 moment. I'm sorry. Go to the next page after that. I  
11:56AM 20 apologize. And the next one, sorry.

21 Go to Page 5. Here we go. All right. We'll stop  
22 there.

23 Q Take a moment to look at Box 21, personnel  
24 assignment, do you see that?

11:56AM 25 A Yes, sir, I do.

Kasprzyk - Direct - Tripi

11:57AM 1 Q Those are all DEA personnel; is that right?

2 A Correct.

3 Q Would this be the space provided in an operational

4 plan to list members of other law enforcement agencies who

11:57AM 5 were participating in an enforcement action?

6 A Yes, it is.

7 Q Do you see any members of the FBI listed there?

8 A I do not.

9 Q Do you see any members of the state police, any

11:57AM 10 New York State Police investigators -- not task force

11 officers -- but state police?

12 A I do not.

13 Q Do you see any IRS agents listed there?

14 A No, sir.

11:57AM 15 Q Do you see any other law enforcement members other

16 than DEA personnel listed?

17 A I do not.

18 **MR. TRIPI:** Did we go back up to Page 3, Ms. Champoux.

19 Page 2, I'm sorry.

11:57AM 20 Q If you could read that second to last paragraph and

21 then the last line there?

22 A The entire paragraph?

23 Q I think you read that one. I'm sorry. I think you

24 left off at...

11:58AM 25 A Right there (indicating)?

Kasprzyk - Direct - Tripi

11:58AM 1 Q Yeah, thank you.

2 A "Ron Serio's brother, Thomas Serio, was previously  
3 arrested and convicted of trafficking 5 kilograms of cocaine  
4 with SOS Robert Mattal. This will be the first buy/walk from  
11:58AM 5 T.S. GS John Flickinger will be the supervisor on  
6 the scene.

7 Q When it reads "this will be the first buy/walk from  
8 T.S.", what is your understanding on what that means  
9 based on your familiarity with DEA jargon?

11:58AM 10 A What that represents is there were no previous  
11 controlled buys from S. and this would be the first time  
12 that one's being attempted.

13 MR. TRIPI: We can zoom out of that, please, Ms.  
14 Champoux. And we can keep scrolling down again. Next page,  
11:58AM 15 please. All right.

16 Q I'd like to focus you in on Box Number 23. Can you  
17 tell us what is depicted in box number 23, Mr. Kasprzyk?

18 A The Box 23 lists out the approvals and preparation.  
19 This particular safety plan was prepared by SA Joseph  
11:59AM 20 Bongiovanni. It was prepared and dated on the 2nd of May,  
21 2013. It was approved by GS John Flickinger.

22 And if you go to the far right, that box on the far  
23 right, those are my initials DMK, 5/2/13. So this  
24 operational plan was sent to me for my review and approval.

11:59AM 25 And then the final box below is approved by ASAC.

Kasprzyk - Direct - Tripi

11:59AM 1 And in this case, was acting ASAC Michael Shelhamer.

2 Q Now before you approved it, based upon -- do you  
3 have any personal recollection of this event?

4 A I do not.

12:00PM 5 Q Based upon your review of this and your routine  
6 practice at the point in time when you signed off and  
7 initialed it, would you have -- part of your routine practice  
8 have discussed the funding of it with Michael Shelhamer?

9 A Yes, sir.

12:00PM 10 Q And if it was not going to be approved by the ASAC,  
11 would you have bothered to approve it?

12 MR. SINGER: Objection. Calls for speculation.

13 Q It's --

14 THE COURT: Overruled.

12:00PM 15 Q -- organizational.

16 THE COURT: Overruled. Overruled.

17 A No.

18 Q Did you understand my question?

19 A I did.

12:00PM 20 Yes, if the ASAC had denied the expense, the  
21 purchase of the narcotics, then I would have reported that  
22 back to the GS and we would not have been able to do the  
23 deal.

24 Q So your signature, your initials would not be  
12:00PM 25 there?

Kasprzyk - Direct - Tripi

12:00PM 1 A Correct.

2 Q Okay. So your initials on that document mean this

3 was going to be approved, correct?

4 A Correct.

12:00PM 5 **MR. TRIPI:** Could we go down to the next page and can we

6 sort of rotate the view. Thank you very much.

7 Q Is this a document that gets attached to that plan?

8 A Yes, sir, it does.

9 Q And what is this document?

12:01PM 10 A This is the DEA-12 which documents the expense of

11 \$1,000, the funds that are needed to facilitate the

12 controlled buy.

13 Q And that relates to the documents we just reviewed

14 the prior five pages, correct?

12:01PM 15 A Yes, sir.

16 Q And in your experience -- withdrawn.

17 So these funds were approved on May 2nd, 2013, and

18 the operation, based upon what was written, was planned for

19 May 6th, 2013; is that right?

12:01PM 20 A Correct.

21 Q Do you know specifically why the operation didn't

22 go?

23 A I do not.

24 Q Whose job is it to inform supervision when an

12:01PM 25 operation is not going to go?

Kasprzyk - Direct - Tripi

12:02PM 1 A That would be the responsibility of the case agent.  
2 Q So, in this case that would be the defendant?  
3 A Correct.  
4 Q So at some point between the 2nd and the 6th, based  
12:02PM 5 upon your review of these documents and DEA practice, the  
6 defendant informed supervision that this buy was not going to  
7 go?  
8 MR. SINGER: Objection. Calls for speculation.  
9 THE COURT: Yeah, sustained.  
12:02PM 10 MR. SINGER: No personal knowledge.  
11 THE COURT: Sustained.  
12 Q What is your understanding of this document based  
13 upon the signatures you see and the dates involved?  
14 MR. SINGER: Objection. Same.  
12:02PM 15 MR. TRIPI: Judge, this is an organizational practice  
16 and this is the supervising --  
17 THE COURT: No, I understand. I just -- I don't quite  
18 understand the question. So, I'm going to sustain the  
19 objection to the form of the question.  
12:02PM 20 MR. TRIPI: Okay. I understand, your Honor.  
21 Q Whose job -- let's step it back. What is the case  
22 agent's job as it relates to planning a controlled buy?  
23 A The case agent orchestrates the purchase. He  
24 interacts with the informant. He talks with the informant  
12:03PM 25 about the buy. He arranges for that buy to occur. Once

Kasprzyk - Direct - Tripi

12:03PM 1 those plans are developed and made, he communicates that to  
2 the GS and to the rest of his team.

3 Q Who advises the GS, and ultimately the RAC, whether  
4 a buy is going forward or not?

12:03PM 5 A That would be the case agent.

6 Q Okay. So in this case funds were going to be  
7 approved, correct?

8 A Correct.

9 Q And you know from this document that at some point  
12:03PM 10 the case agent advised the buy wasn't go through?

11 MR. SINGER: Objection. Calls for speculation. Same  
12 objection, Judge.

13 MR. TRIPI: It is not, your Honor. He has no personal  
14 knowledge.

12:03PM 15 MR. SINGER: Can we approach.

16 THE COURT: Sure, come on.

17 (Held at side bar:)

18 THE COURT: So my question, Mr. Tripi, how does he know  
19 from this document the buy didn't go?

12:04PM 20 MR. TRIPI: Because he just explained that. We have  
21 established that the practice was the documents would not  
22 have had his sign off if the funds were not available and the  
23 ASAC level was not going to approve it. So we know it's  
24 approved. And then we know from the organizational practice,  
12:04PM 25 routine practice, that it's the case agent's job to let the

Kasprzyk - Direct - Tripi

12:04PM 1 supervision know whether or not the buy is going to go  
2 through.

3 **THE COURT:** Right.

4 **MR. TRIPI:** And so, here, we don't have the final  
12:05PM 5 sign-off, and we don't have a buy that occurred because of  
6 some --

7 **THE COURT:** How do we know we don't have a buy that  
8 occurred?

9 **MR. TRIPI:** Because there's not the final sign-off.

12:05PM 10 **THE COURT:** I think you need to establish that.

11 **MR. TRIPI:** I thought I did, Judge, but I can ask some  
12 more questions.

13 **MR. SINGER:** Here's the problem is that they're bringing  
14 up an individual that has a extraordinarily limited  
12:05PM 15 recollection of what happened and professed on the stand that  
16 he has no personal knowledge of this buy.

17 **THE COURT:** Right.

18 **MR. SINGER:** They're trying to use these documents to  
19 show that something may or may not have happened. But the  
12:05PM 20 problem is that Mr. Kasprzyk knows that he signed the form.  
21 He's identified that.

22 **THE COURT:** Yep.

23 **MR. SINGER:** He can't say from any personal knowledge,  
24 based on his recollection or anything else, what happened  
12:05PM 25 with the form after that. And so the government's trying to

Kasprzyk - Direct - Tripi

12:05PM 1 instead of using a witness with personal knowledge get him to  
2 testify to what he may think may have happened with it. It's  
3 all speculative, Judge. He has no personal knowledge.

4 **THE COURT:** I think he can testify based on the form  
12:06PM 5 what it means if there's no signature in a certain spot.

6 **MR. SINGER:** Well, Judge, respectfully, he can't testify  
7 to that. He was not the bottom line person in Albany on that  
8 form. He cannot testify to why that person did not sign that  
9 form. He doesn't know.

12:06PM 10 **THE COURT:** You can voir dire on that.

11 **MR. SINGER:** But he doesn't know that fact. That's the  
12 problem is he does not know that fact.

13 **THE COURT:** And you can voir dire and if he can't, if he  
14 can't establish that, then I'll preclude the question but I  
12:06PM 15 think he can testify what signatures on the form mean or  
16 don't do web.

17 **MR. TRIPI:** This is the original form.

18 **THE COURT:** Do we have the original form?

19 **MR. TRIPI:** This is the same document that came in at  
12:06PM 20 the last trial as part of a larger file.

21 **THE COURT:** My question is how do we know that there's  
22 not another version?

23 **MR. TRIPI:** Because we have the whole file.

24 **MR. SINGER:** All we know is that this was in the file.

12:06PM 25 **MR. TRIPI:** Judge, this is nothing different than

Kasprzyk - Direct - Tripi

12:06PM 1 absence of a entry in business record with someone from  
2 organizational knowledge he has to testify about that.

3 **THE COURT:** I understand that but he can't testify to  
4 what that signature means. It could mean other things.

12:07PM 5 **MR. TRIPI:** I think what Mr. Singer is saying is that he  
6 doesn't want it in because it hurts him.

7 **THE COURT:** No, no, no.

8 **MR. TRIPI:** And cross-examination would be appropriate  
9 but this is clearly highly probative damaging testimony that  
12:07PM 10 he doesn't want in.

11 **THE COURT:** If you can establish a foundation for his  
12 ability to testify from this document what happened or didn't  
13 happen, I'll allow it, okay. But you've got to establish  
14 that foundation first.

12:07PM 15 (Open court:)

16 **Q** Based upon your understanding of these documents  
17 and the signatures that you see on here, and based upon your  
18 knowledge of how the DEA operates, between May 2nd, 2013,  
19 when the funding was approved by you, and May 6th, 2013, when  
12:08PM 20 the operation was planned, what transpired?

21 **MR. SINGER:** Again, objection, Judge. We're asking for  
22 the witness to testify to something outside of his personal  
23 knowledge.

24 **THE COURT:** Do you know what transpired based on the  
12:08PM 25 document?

Kasprzyk - Direct - Tripi

12:08PM 1       **THE WITNESS:** When you ask what transpired, sir, are you  
2 asking, like, what happened between the informant and Agent  
3 Bongiovanni?

4       **THE COURT:** Mr. Tripi asked what transpired and I'm  
12:08PM 5 saying can you testify to what happened between May 2nd and  
6 May 6th based on this document?

7       **THE WITNESS:** (No response.)

8       **Q** Do you know the -- may I ask a question Judge?

9       **THE COURT:** Sure.

12:08PM 10       **Q** Do you know the buy did not go forward?

11       **A** Yes, I know the buy did not happen.

12       **Q** Okay. Based on your training and experience and  
13 DEA's practice, what are some common reasons for buys not  
14 going forward after --

12:09PM 15       **THE COURT:** Wait. How --

16       **Q** -- the --

17       **THE COURT:** How do you know the buy didn't go forward?

18       **THE WITNESS:** The funds were never released.

19       **THE COURT:** How do you know the funds were never  
12:09PM 20 released?

21       **THE WITNESS:** There was no signature by the ASAC.

22       **THE COURT:** Okay. Go ahead.

23       **Q** And so with that established, who is the person  
24 responsible for reporting whether the buy is going forward or  
12:09PM 25 not before the funds get released, the case agent's job is to

Kasprzyk - Direct - Tripi

12:09PM 1 do what?

2 A Is to work with the confidential source and  
3 organize the buy.

4 Q And then do what as it relates to notifying  
12:09PM 5 supervision?

6 A Once those arrangements -- once those details are,  
7 are finalized and formulated, the case agent would meet with  
8 the Group Supervisor and let them know the status of the buy  
9 and how it was going to go.

12:09PM 10 Q And so here, the buy never went through?

11 A In this case, there is no ASAC signature. Funds  
12 were not released because it needs to have an ASAC signature  
13 for that to happen.

14 Q But you had put all the parameters in place for the  
12:10PM 15 funds to be approved is that correct?

16 A Correct. The operation was approved by the GS and  
17 by myself.

18 Q Okay. Do you know what the defendant reported to  
19 Group Supervisor Flickinger or yourself about why the buy  
12:10PM 20 wasn't going through?

21 A I do not.

22 Q Okay. Would whatever information that was reported  
23 depend upon this defendant's truthfulness?

24 A Yes.

12:11PM 25 MR. TRIPI: We can take that down, Ms. Champoux.

Kasprzyk - Direct - Tripi

12:11PM 1 Q Switching to another gear, Mr. Kasprzyk.  
2 Did you speak with the defendant some time shortly  
3 after he retired from the DEA in or about February, early  
4 February, February 1st, 2019?

12:11PM 5 A Yes, sir.

6 Q And can you describe for the jury what that  
7 conversation was?

8 A Joe had retired from DEA. He called me. He was  
9 interested in securing a job, an after DEA job. He was  
10 asking about working potentially for M&T Bank.

11 Q And can you describe more about that conversation?

12 A Yes. We talked briefly. I referred him to a  
13 contracting agency that I knew was hiring, hiring retired law  
14 enforcement officers. I suggested that he reach out to them.

12:11PM 15 Joe then talked briefly about the pending investigation that  
16 was happening against him.

17 Q And what did Mr. Bongiovanni say to you about the  
18 criminal investigation into him? Withdrawn. The  
19 investigation into him, sorry.

12:12PM 20 A He complained that he was being unfairly targeted,  
21 that another agent in the DEA office, Tony Casullo had it out  
22 for him and he felt that he was being unfairly targeted.

23 Q Did he say why?

24 A No.

12:12PM 25 Q Did he give you details?

Kasprzyk - Direct - Tripi

12:12PM 1 A No.

2 Q Do you know Special Agent Casullo?

3 A I know him, yes.

4 Q Had you ever worked with him or did he come to the

12:12PM 5 DEA Buffalo office after you left?

6 A Yeah, I don't know him well. He came to the DEA

7 office after I had retired from the Buffalo office.

8 Q After he made those comments to you, what was your

9 response to the defendant?

12:12PM 10 A (No response.)

11 Q If you recall?

12 A I was sympathetic but I really didn't have much to

13 say because I didn't really know anything about the

14 investigation that was happening.

12:13PM 15 Q Did the defendant say anything else to you about

16 that --

17 A No, sir.

18 Q -- at that point? What was your, what was your

19 impression of the defendant's demeanor pertaining to the

12:13PM 20 investigation?

21 A He was very concerned.

22 MR. TRIPI: One moment, please, your Honor.

23 (WHEREUPON, a discussion was held off the record.)

24 MR. TRIPI: I'm done with direct, your Honor.

12:15PM 25 THE COURT: Okay. So we are going to take our noon

Kasprzyk - Direct - Tripi

12:15PM 1 recess now, folks.

2 Please remember my instructions about not discussing any

3 aspect of this case with anyone, including each other. Don't

4 do any research on your own. Don't use tools of technology

12:15PM 5 either to research the case or communicate about the case

6 with anyone and don't read or watch or listen to any news

7 coverage about the case, if any is in progress. And don't

8 make up your mind about anything until the case is submitted

9 to you.

12:15PM 10 We'll see you back here at about 1:15 or so, okay?

11 Thanks.

12 (**WHEREUPON**, jury excused for luncheon recess.)

13 **THE COURT:** Okay. Anything for the record before we

14 break?

12:16PM 15 **MR. TRIPI:** Not from the government.

16 **MR. SINGER:** Just to admonish the witness not to discuss

17 his testimony during the break.

18 **THE COURT:** Yes. You're not to discuss your testimony

19 with Mr. Tripi or anyone on the government team, or anyone

12:16PM 20 during the lunch break.

21 **THE WITNESS:** Okay.

22 **THE COURT:** Great.

23 Thank you. See you all in about an hour.

24 (**WHEREUPON**, luncheon recess taken.)

1:24PM 25 (Open court, defendant and jury present.)

Kasprzyk - Cross - Singer

1:24PM 1 **THE COURT:** Welcome back, everyone.

2 The record will reflect that all our jurors are present.

3 I remind the witness that he's still under oath.

4 And, Mr. Singer, you may begin.

1:24PM 5 **MR. SINGER:** Thank you, Judge.

6 **CROSS-EXAMINATION BY MR. SINGER:**

7 **Q** Hi, Mr. Kasprzyk, how are you.

8 **A** Good afternoon.

9 **Q** So, my understanding is that you were the group  
1:24PM 10 supervisor of D-57 back in 2009; is that right?

11 **A** Yes, sir.

12 **Q** And later after that in 2011, you were promoted up  
13 to become the Resident Agent in Charge, the RAC of the DEA  
14 Buffalo office in 2011?

1:25PM 15 **A** Yes.

16 **Q** And then you stayed in that position as the RAC  
17 from 2011 till 2013 when you retired, is that right?

18 **A** Correct.

19 **Q** Do you recall about when in 2013 you retired?

1:25PM 20 **A** It was September-ish, right around in there.

21 **Q** So some time toward the end of the summer?

22 **A** Yes, sir.

23 **Q** I know sometimes in federal jobs I know sometimes  
24 people have personal leave where you're able to take off the  
1:25PM 25 last couple of weeks before you officially retire to cash in

Kasprzyk - Cross - Singer

1:25PM 1 your leave. Did you do something like that or did you work  
2 to near the end?

3 A No, I had some leave that I was taking at the end.

4 Q Do you approximately know how long you took leave  
1:25PM 5 before you fishily retired?

6 A I don't recall specifically but it was several  
7 weeks.

8 Q Okay.

9 A I believe I left the office some time in July.

1:25PM 10 Q Okay. And you stated that you first started in  
11 Buffalo as a special agent, is that correct?

12 A Yes, sir.

13 Q And then eventually you were promoted up to the GS  
14 position, right?

1:26PM 15 A Yes, sir.

16 Q And then eventually to the RAC position before you  
17 retired?

18 A Correct.

19 Q So, you talked a little bit on direct about how the  
1:26PM 20 Buffalo office is subdivided into different parts. I want to  
21 go through that a little bit with you.

22 So, one of the groups that you mentioned was D-57,  
23 correct?

24 A Yes, sir.

1:26PM 25 Q Another group you mentioned was D-58?

Kasprzyk - Cross - Singer

1:26PM 1 A Yes, sir.

2 Q And then another group you mentioned was the  
3 diversion group. I think it's referred to officially as the  
4 tactical diversion group, right?

1:26PM 5 A No, sir. I'm talking about the -- I don't believe  
6 that the tactical diversion group was in place prior to my  
7 retirement. That, I believe, happened afterwards. I'm  
8 talking about the diversion group.

9 Q Okay.

1:26PM 10 A The standard diversion group.

11 Q All right. So you mentioned that D-57 is staffed  
12 primarily with DEA special agents, along with some local task  
13 force officers to support?

14 A Yes, sir.

1:26PM 15 Q And then the D-58, that's staffed primarily with  
16 task force officers?

17 A Yes, sir.

18 Q So, as far as D-57 is concerned, do they  
19 investigate narcotics crimes very similar to the same ones  
1:27PM 20 that D-58 investigates?

21 A Yes, sir.

22 Q So the primary difference between the two groups is  
23 that one's composed primarily of special agents from the DEA  
24 and D-58, the other one's, composed mainly of task force  
1:27PM 25 officers?

Kasprzyk - Cross - Singer

1:27PM 1 A Yes.

2 Q But functionally speaking, they investigate the

3 same types of crimes?

4 A That's correct.

1:27PM 5 Q And as far as the diversion group that was in place

6 at that time, what's the purpose of the diversion group? I

7 don't think you ever got into that.

8 A The diversion group handles regulatory

9 investigations that would be primarily on DEA registrants, so

1:27PM 10 doctors, pharmacies, people that are given a DEA registration

11 number to be able to distribute controlled substances

12 lawfully.

13 Q Yeah, so to break that down a little bit. So, if

14 I'm a physician and I prescribe certain drugs that are

1:28PM 15 considered scheduled drugs under the Controlled Substances

16 Act?

17 A Right.

18 Q The DEA provides me with a license to distribute

19 those drugs?

1:28PM 20 A That's right.

21 Q And then the Diversion Group's responsibility is to

22 make sure that the doctor who's writing those prescriptions

23 is doing it correctly?

24 A That's correct.

1:28PM 25 Q And as far as the pharmacies that have the drugs

Kasprzyk - Cross - Singer

1:28PM 1 the doctor writes the prescription for, the Diversion Group  
2 is also responsible to make sure the pharmacies are operating  
3 under the law?

4 A That's correct.

1:28PM 5 Q So they're not going out investigating street crime  
6 or street level crimes like a D-57 or D-58 agent would do,  
7 correct?

8 A Typically not, yes, sir.

9 Q Okay. But are there times when people sometimes  
1:28PM 10 support from the Diversion Group operations going on with  
11 D-57 and D-58?

12 A Make sure I understand your question. Would the  
13 diversion group support a enforcement operation?

14 Q Correct.

1:28PM 15 A If that enforcement operation was targeting a  
16 doctor or a pharmacy, the Diversion Group might be involved  
17 in that investigation to help support it, yes.

18 Q Okay. But as far as operations that are occurring,  
19 like a search warrant execution, if you needed extra manpower  
1:29PM 20 at a search warrant site, would Diversion Group agents  
21 sometimes help out in that responsibility?

22 A For the initial entry on the search warrant?

23 Q Overall.

24 A Again, only if that target of investigation was a  
1:29PM 25 DEA registrant and there was a need to have Diversion there

Kasprzyk - Cross - Singer

1:29PM 1 to assist in the search warrant.

2 Q Okay. And as far as D-57 and 58 were concerned, if

3 someone was doing that search warrant type of operation like

4 I just described, if 58 had some extra people that 57 needed

1:29PM 5 on that particular day because of manning, would they

6 sometimes support the operation 57 was running?

7 A Yes.

8 Q And the same thing goes with 58?

9 A Yes, sir.

1:29PM 10 Q Okay. So as far as the breakdowns of the groups,

11 you mentioned that every group is, is run by a front line

12 supervisor who's the GS, correct?

13 A Yes, sir.

14 Q And that group supervisor's is in charge of all the

1:30PM 15 agents within that one particular group?

16 A Yes, sir.

17 Q And you mentioned that when you were part of D-57

18 and you were the GS of 57, you managed roughly about 12 to 13

19 different agents under you in that position, correct?

1:30PM 20 A It was a combination of agents and task force

21 officers combined.

22 Q So 12 to 13 different people inside the group you

23 managed as the GS, correct?

24 A Correct.

1:30PM 25 Q And you had supervisor responsibility over all

Kasprzyk - Cross - Singer

1:30PM 1 those people in the group?

2 A Yes, sir.

3 Q So, I mean, part of your job as a supervisor is to

4 look after them, correct?

1:30PM 5 A Yes, sir.

6 Q To teach them, correct?

7 A Yes, sir.

8 Q And sometimes to allocate resources, correct?

9 A I didn't hear your question.

1:30PM 10 Q And sometimes your job as the GS is also to

11 allocate resources, correct?

12 A Outkeep?

13 Q Allocate resources?

14 A Allocate. I'm sorry.

1:31PM 15 Q Okay.

16 A I didn't hear your word.

17 Q That's okay.

18 A In terms of personnel or in terms of funding, what

19 resources are you specific specifically?

1:31PM 20 Q Well, let's start, first, with personnel. So, as

21 part of your job as the GS of the group, did you have some

22 control over where people would go sometimes?

23 A Yes.

24 Q And you'd have control over what people would

1:31PM 25 sometimes focus on as far as investigations, correct?

Kasprzyk - Cross - Singer

1:31PM 1 A Yes.

2 Q So, for instance, if there was a particular  
3 operation going on in one of part of the day, you may choose  
4 as the group's supervisor to say, hey, we need more personnel  
1:31PM 5 to work on this one particular case and you'd task those  
6 people to not investigate the cases they were working on and,  
7 instead, focus on that one particular project.

8 A No. I wouldn't tell them not to investigate  
9 another case. I may have to redeploy resources to assist an  
1:32PM 10 active investigation, one in which we're going out on the  
11 street to make a buy or to conduct a surveillance operation.  
12 Those resources would be reallocated temporarily to support  
13 that street operation but once that's done, agents would then  
14 continue to be able to work whatever other cases that they  
1:32PM 15 would have going on.

16 Q I think that's what I'm getting at is that when you  
17 had a particular operation that required more than just the  
18 case agent -- let's say it required ten different people to  
19 be there -- you may pull people from your group to focus on  
1:32PM 20 that one particular event, correct?

21 A Correct.

22 Q And, so, as far as the money resourcing, I know you  
23 mentioned that when you were the RAC, you'd be responsible  
24 for the overall budget of the office, correct?

1:32PM 25 A Yes, sir.

Kasprzyk - Cross - Singer

1:32PM 1 Q When you were GS, did you also have  
2 responsibilities with regard to money?

3 A I would have responsibilities to approve buys and  
4 approve payments to informants. So that would be, you know,  
1:32PM 5 when it comes to the money and the expenditure of money, that  
6 would be my responsibility.

7 Q So you would make a recommendation to the RAC of  
8 the office as to whether or not certain funds should be  
9 allocated to a particular operation, correct?

1:33PM 10 A That's correct.

11 Q And then it was up to the RAC to make a decision  
12 about whether or not he or she agreed with that decision,  
13 correct?

14 A Yes, sir.

1:33PM 15 Q And then you mentioned there was a further process  
16 where all of those decisions from the RAC perspective need to  
17 get forwarded to Albany to the ASAC for ultimate approval,  
18 correct?

19 A Yes, sir.

1:33PM 20 Q Okay. So, as far as the DEA is concerned, you  
21 mentioned that the focus of the DEA is to enforce the drug  
22 laws under the Controlled Substances Act, correct?

23 A Yes, sir.

24 Q Title 21?

1:33PM 25 A Correct.

Kasprzyk - Cross - Singer

1:33PM 1 Q And, so, with regard to those particular  
2 substances, I mean, we're talking about hundreds of different  
3 substances that are part of the Controlled Substance Act,  
4 correct?

1:33PM 5 A Yes.

6 Q And there are different schedules as far as levels  
7 within the Controlled Substances Act, correct?

8 A Yes, sir.

9 Q So sometimes some drugs might be classified as  
1:34PM 10 Schedule I controlled substances, right?

11 A Yes, sir.

12 Q Sometimes they might be classified as Schedule III  
13 controlled substances, correct?

14 A That's correct.

1:34PM 15 Q And, so, in Buffalo, D-57, fair statement that the  
16 majority of cases that you investigated as far as controlled  
17 substances back in 2009, they primarily dealt with powder  
18 cocaine, crack cocaine and heroin?

19 A Primarily that was much of the work that we were  
1:34PM 20 doing --

21 Q Yeah.

22 A -- in that time period, yes.

23 Q Yeah, I'm not saying that you don't focus on other  
24 type of cases involving other drugs, right?

1:34PM 25 A That's correct.

Kasprzyk - Cross - Singer

1:34PM 1 Q So, for instance, you mentioned marijuana was a  
2 case type drug that you would investigate as far as D-57 was  
3 concerned?

4 A Yes. I mean, the investigations -- our targets of  
1:34PM 5 investigations would often involve the three drugs that you  
6 mentioned. But they were also sometimes driven by the type  
7 of violator, the individual violator himself. So, if it was  
8 a known violator that was involved in drug trafficking, we  
9 might target him and it wouldn't be cocaine, powder cocaine,  
1:35PM 10 or crack cocaine, it might be some other type of drug. So  
11 that would also influence our decision to open a case file.

12 Q But when you were the GS back in 2009, it's still a  
13 fair statement that the majority of cases that were  
14 investigated in the group involved powder cocaine, crack  
1:35PM 15 cocaine, and heroin, correct?

16 A Yes.

17 Q And fentanyl. As fentanyl make more ubiquitous  
18 within the drug supply within the United States, is that  
19 something that happened back in 2009 or a little bit later  
1:35PM 20 when you started to become the RAC of the office?

21 A It was later it started to happen. I think the  
22 focus in '09 up until my retirement was the change with  
23 pharmaceuticals and the diversion of pharmaceuticals  
24 hydrocodone, OxyContin, Opana, that became part of our work  
1:36PM 25 with the DEA.

Kasprzyk - Cross - Singer

1:36PM 1 Q Certainly. And I think, you know, whether it  
2 was -- heroin, your understanding your training and  
3 experience is an opiate, correct?

4 A Correct.

1:36PM 5 Q And the prescription narcotics you just talked  
6 about and other type of drugs like that, they're also  
7 opiate-based medication, correct?

8 A Yes, sir.

9 Q And when we talk about fentanyl. Fentanyl is an  
1:36PM 10 opiate type of, of drug, as well, correct?

11 A That's correct.

12 Q And fair to say that the focus of the DEA on the  
13 opiates was in response to the opioid addiction problem that  
14 was ongoing within our community?

1:36PM 15 A Yes, sir.

16 Q So as far as the particular drugs, would you agree  
17 with me that there are, there are drugs that are more  
18 dangerous than others?

19 MR. SINGER: Objection. 403.

1:37PM 20 THE COURT: I'm sorry?

21 MR. TRIPI: Objection. Rule 403.

22 THE COURT: No, overruled.

23 A Yes.

24 Q And so when we talk about the opiates that we just  
1:37PM 25 spoke about -- heroin, fentanyl, the opioid medication -- are

Kasprzyk - Cross - Singer

1:37PM 1 those sometimes more dangerous within the supply system in  
2 the community?

3 A Yes, sir.

4 Q And is that because they sometimes can cause people  
1:37PM 5 to overdose and die?

6 A That's correct, sir.

7 Q Okay. And fair statement that part of the reason  
8 why your office focused on those particular type of drugs we  
9 just talked about, was based on the fact of their  
1:37PM 10 dangerousness within the community?

11 A That's correct.

12 Q So we talked a little bit about the operations plan  
13 that was dated in May of 2013 and I wanted to go through that  
14 a little bit with you at this time.

1:37PM 15 **MR. SINGER:** So, Ms. Champoux, would you mind bringing  
16 up Government Exhibit 8A-7, please.

17 Q See that, Mr. Kasprzyk?

18 A Yes, sir.

19 Q All right, perfect.

1:38PM 20 So, as far as the exhibit -- so, prior to coming to  
21 court today, you gave a couple different statements to  
22 investigators and prosecutors about your involvement and  
23 understanding of this case; is that right?

24 A Prior to when?

1:39PM 25 Q Prior to coming into court today --

Kasprzyk - Cross - Singer

1:39PM 1 A Yes.

2 Q -- you spoke to a couple different people about the

3 events that we all talked about --

4 A Yes, sir.

1:39PM 5 Q -- in court today, correct?

6 A Yes, sir.

7 Q And fair statement that prior to today, you never

8 talked about this one particular document before

9 (indicating)?

1:39PM 10 A That's correct.

11 Q Okay. So I was trying to figure out when the first

12 time that you were presented this document. Was it today?

13 A It might have been not today maybe during prep for

14 this trial, so maybe a few days ago.

1:39PM 15 Q So --

16 A Week ago.

17 Q So a few days ago was the first time you saw this

18 document?

19 A Yes, since I initially signed it back several years

1:39PM 20 ago but, yes.

21 Q That's what I'm getting at.

22 A Yeah.

23 Q So the first time that you saw this document since

24 May of 2013 was a few days ago?

1:40PM 25 A Correct.

Kasprzyk - Cross - Singer

1:40PM 1 Q And that was during a witness prep session with the  
2 government?

3 A Yes, sir.

4 Q Were there any agents with you from the government  
1:40PM 5 during that time?

6 A No, sir, we did it via zoom.

7 Q Do you know if anyone was taking any particular  
8 notes during that particular conversation?

9 A I do not know.

1:40PM 10 Q So this particular document, when you were the RAC  
11 of the office in Buffalo back in 2011 to 2013, did you keep  
12 any type of notes?

13 A On occasion, yes.

14 Q I guess what I'm getting at -- I'm in the Navy.  
1:40PM 15 I'm responsible for 30 people and I write down information to  
16 keep everything straight about what's going on. So, did you  
17 have a book or some type of journal or something else along  
18 those lines where you keep notes about what was going on day  
19 to day in the office?

1:41PM 20 A I did not, no.

21 Q Did you keep any type of "to do list" about things  
22 that you needed to get done at the office at the time you  
23 were the RAC?

24 A On occasion, yes.

1:41PM 25 Q And since you retired, did you maintain any type of

Kasprzyk - Cross - Singer

1:41PM 1 books or notes like that in your possession?

2 A No, sir.

3 Q Do you know if the DEA has any of those any more?

4 A I, I -- I did not provide those personal notes to  
1:41PM 5 the DEA when I retired.

6 Q So when you were coming in to testify in court, you  
7 didn't have the benefit of trying to refresh your memory  
8 about what may have happened in 2013 or 2009 with notes that  
9 you may have prepared back then?

1:41PM 10 A I did not.

11 Q You testified that with regard to this one  
12 particular exhibit, you recognize your signature, correct?

13 A Yes, sir.

14 Q But you don't specifically recall many of the  
1:41PM 15 events behind the form, correct?

16 A Yes, sir, that's right.

17 Q And you lack personal knowledge about certain  
18 things that may have happened with regard to the form; is  
19 that correct?

1:42PM 20 A That's correct.

21 Q So I want to go through it a little bit more  
22 specifically with the stuff that you may remember.

23 MR. SINGER: So, if we could turn to Page 2 of the form,  
24 Ms. Champoux. And if we could zoom in on the second  
1:42PM 25 paragraph.

Kasprzyk - Cross - Singer

1:42PM 1 Q So, this one particular paragraph, you remember  
2 talking about on direct how this related information about  
3 other agencies or offices that were involved as part of the  
4 investigation?

1:42PM 5 A Yes, sir.

6 Q And this one particular paragraph, it's referring  
7 to the investigation of the Ron Serio Drug Trafficking  
8 Organization and those people who participated in that  
9 investigation?

1:42PM 10 A Yes, sir.

11 Q Do you have any specific recollection of who was  
12 involved as far as agents in that particular investigation  
13 from people outside the DEA?

14 A I do not.

1:43PM 15 Q Do you have any type of specific recollection about  
16 investigation that was ongoing in 2013 regarding Ron Serio's  
17 DTO?

18 A I do not.

19 Q It's just too long ago for you to remember anything  
1:43PM 20 specific?

21 A Yes.

22 Q All right. So, as far as this one particular  
23 paragraph, this is referring to other agencies and offices  
24 that may be involved in the investigation at that time,  
1:43PM 25 correct?

Kasprzyk - Cross - Singer

1 A Yes, sir.

2 **MR. SINGER:** All right. So if we could zoom out on  
3 that, Ms. Champoux, and if we could turn to Page 5 of the  
4 exhibit.

5 **Q** Do you remember looking and talking about this on  
6 direct examination, sir?

7 A Yes, sir, I do.

8 **Q** So this one particular part of the operations plan,  
9 this is referring to individual agents who are involved in  
10 the operation regarding this one particular controlled buy,  
11 correct?

12 A Correct.

13 **Q** And so this form outlines what those agent's  
14 responsibilities are with regard to the operation?

15 A Yes, sir.

16 **Q** And it also outlines their contact information?

17 A Yes, sir.

18 **Q** It also outlines their call signs?

19 A Correct.

20 **Q** What type of vehicles they would be driving that  
21 day?

22 A Yes, sir.

23 **Q** And this particular operation involving this  
24 controlled buy, this was a DEA operation, right?

25 A It was DEA-led, correct.

Kasprzyk - Cross - Singer

1:44PM 1 Q And sometimes even though other agencies might be  
2 involved in an allegation, it's not uncommon for DEA just to  
3 run an investigation or operation by themselves, correct?  
4 A It, it happens.

1:44PM 5 Q Yeah. So for this one particular operation here,  
6 this was a controlled buy, correct?  
7 A Correct.

8 Q And this was something, based on what you can see  
9 on this paper, that the DEA was staffing, correct?

1:44PM 10 A Correct.

11 Q And it wouldn't be outside the ordinary for other  
12 agencies that may be involved in a larger investigation not  
13 to participate in one particular operation, correct?  
14 A Typically with a joint investigation, where you  
1:45PM 15 have other agencies involved, you would ask those agencies to  
16 participate in the buy.  
17 Q Okay. So typically that may happen but that's not  
18 required, right?  
19 MR. TRIPI: Objection, argumentative.

1:45PM 20 THE COURT: Overruled. Go ahead. You can answer.  
21 A I didn't understand the question.  
22 Q Typically that might be asked but that's not  
23 required, correct?  
24 A No, it's not required.

1:45PM 25 Q So, for instance, you're the resident agent in

Kasprzyk - Cross - Singer

1:45PM 1 charge of the office, correct?

2 A Yes, sir.

3 Q That's your signature down at the bottom, right, on  
4 that form?

1:45PM 5 A Those are my initials, yes, sir.

6 Q And that's your handwriting, correct?

7 A Correct.

8 Q And that's your approval, as you testified on  
9 direct examination, right?

1:45PM 10 A Yes, sir.

11 Q And if you felt the need that you needed to enlist  
12 other people from other agencies in this particular  
13 operation, you would have said something to the GS, correct?

14 A I would have.

1:45PM 15 Q But it doesn't appear like you did that here,  
16 correct?

17 A That would have been a decision that I would have  
18 deferred to the case agent and the GS.

19 Q Okay. And, so, since the case agent signed at the  
1:46PM 20 bottom over here on the left side, do you see that?

21 A I do.

22 Q And you see the GS, John Flickinger, signed also,  
23 correct?

24 A Yes, sir.

1:46PM 25 Q It doesn't appear like they felt the need to have

Kasprzyk - Cross - Singer

1:46PM 1 anybody from another agency participate in this one  
2 particular operation, right?

3 A That would be my assessment based on those  
4 signatures.

1:46PM 5 Q And then when you signed down at the bottom right  
6 over there, you took that assessment and approved it,  
7 correct?

8 A Correct.

9 Q And as the main person in charge of the Buffalo  
1:46PM 10 office, you have the ability to disagree with a case agent,  
11 right?

12 A I do.

13 Q You have the ability to disagree with the GS,  
14 right?

1:46PM 15 A I do.

16 Q Because they both work for you, correct?

17 A Correct.

18 Q But you didn't appear to do that here, correct?

19 A That's correct.

1:46PM 20 Q So, as far as the signature on the bottom of that  
21 page, you testified on direct that you claim you spoke with  
22 the ASAC in Albany, is that right?

23 A I testified that typically I would talk to the ASAC  
24 prior to sending him a completed 12 and 6. I do not have any  
1:47PM 25 specific recollection of that conversation but in all

Kasprzyk - Cross - Singer

1:47PM 1 controlled buy operations that I'd be submitting to the ASAC  
2 for approval, I would always call them ahead of time and  
3 describe to them what was going to happen.

4 Q Okay. And so, again, you don't have any specific  
1:47PM 5 recollection of who you spoke to, correct?

6 A Well, Mike Shelhamer would have been the acting  
7 ASAC at the time, so it would have been Mike based on what  
8 was written in this DEA-12.

9 Q Based on the form. But you don't remember who you  
1:47PM 10 may have spoke to?

11 A I don't have any specific recollection of that  
12 conversation with Mike, that's correct.

13 Q You don't have any type of notes about that  
14 conversation any more, correct?

1:47PM 15 A I do not.

16 Q Okay. So, this form was signed by you on the 2nd  
17 of May of 2013, correct?

18 A That's correct, sir.

19 Q Looks like it was signed by both Special Agent  
1:48PM 20 Bongiovanni and GS John Flickinger on the same date, correct?

21 A Yes, sir.

22 Q And do you recall what day of the week that was  
23 back in 2013?

24 A I do not.

1:48PM 25 Q Would taking a look at a calendar perhaps refresh

Kasprzyk - Cross - Singer

1:48PM 1 your recollection as to what day of week that was?

2 A Yes, sir.

3 (Showing cell phone.)

4 Q I'll take that away from you.

1:48PM 5 Which day of the week was May 2nd, back in 2013?

6 A That was a Thursday.

7 Q So it was a Thursday.

8 **MR. SINGER:** Then, Ms. Champoux, if you could move back  
9 to Page 1 of the exhibit, please. If you could zoom in on  
1:49PM 10 that notation in handwriting right down at the bottom.

11 Q You went through this with Mr. Tripi. So "ALB", he  
12 had asked you whether or not the ASAC had an office in  
13 Albany?

14 A Yes, sir.

1:49PM 15 Q And the ASAC does have an office in Albany, right?

16 A Yes, sir, that's correct.

17 Q And when you sign off on a particular form and it  
18 needs to get sent to Albany, do you put that into a fax  
19 machine yourself or do you have someone else do it?

1:49PM 20 A No, sir. I have someone else do that for me.

21 Q Okay. And it's part of common practice in your  
22 office when support staff send something to Albany, do they  
23 normally note the time and date that they do that?

24 A Typically, yes he.

1:49PM 25 Q So you wouldn't have any disagreement with me that

Kasprzyk - Cross - Singer

1:49PM 1 that this is a statement about when this was sent to Albany?  
2 A It appears to be that, sir.  
3 Q So this was sent, this package for the controlled  
4 operation, to Albany at the end of the day on Thursday, the  
1:50PM 5 2nd?  
6 A Correct.  
7 Q And then the 3rd would be Friday, correct?  
8 A Correct.  
9 Q Now this operation was planned for the 6th of May  
1:50PM 10 of 2013, correct?  
11 A Yes, sir.  
12 Q And that would be a Monday, correct?  
13 A Yes, sir.  
14 Q So there was an intervening weekend over the time,  
1:50PM 15 correct?  
16 A Correct.  
17 Q All right. So, you had mentioned that there are a  
18 number of different reasons why operations sometimes don't  
19 move forward, correct?  
1:50PM 20 A Yes, sir.  
21 Q So, one of the particular reasons could potentially  
22 be that a controlled -- sorry, a confidential source that  
23 you're using may flake, right, they're not willing to move  
24 forward with the operation any more?  
1:50PM 25 **MR. TRIPI:** Objection to the term "flake". The witness

Kasprzyk - Cross - Singer

1:50PM 1 didn't use that term.

2 **THE COURT:** No. Overruled.

3 A The word again that you used?

4 **Q** Sure. Is it possible that sometimes CSs flake,

1:50PM 5 they don't want to move forward with something any more and,

6 therefore, that's the reason why operations don't move

7 forward?

8 A Flake?

9 **THE COURT:** Are you not familiar with that term?

1:51PM 10 A I'm not familiar with...

11 **THE COURT:** Then rephrase the question.

12 **Q** So, does sometimes CSs, in your experience as an

13 agent for over 25 years, get cold feet?

14 A Yes, that happens.

1:51PM 15 **Q** And sometimes operations can't move forward because

16 that's the reason?

17 A Yes, sir.

18 **Q** And in your experience, do sometimes CSs have

19 trouble getting in touch with the target of a particular

1:51PM 20 operation?

21 A Yes, sir.

22 **Q** And is that sometimes a reason why an operation

23 can't move forward?

24 A Yes, sir.

1:51PM 25 **Q** And sometimes the target of investigations in your

Kasprzyk - Cross - Singer

1:51PM 1 experience may agree to meet up but never show up?

2 A Yes, sir, that does happen.

3 Q Sometimes that causes operations not to move  
4 forward?

1:51PM 5 A Correct.

6 Q In your experience there might be some logistical  
7 issues that sometimes impact the ability to execute an  
8 operation on a particular day, correct?

9 A With "logistical issues", what you specifically  
1:52PM 10 referring to?

11 Q So let's talk about personnel. Like you need a  
12 certain number of personnel to staff an operation, correct?

13 A Correct.

14 Q To do it safely, correct?

1:52PM 15 A Yes, sir.

16 Q And if you had insufficient number of personnel on  
17 a particular date and time to run an operation, that might  
18 cause an operation to get canceled, correct?

19 A Yes, sir, it could impact the operation.

1:52PM 20 Q The same thing is about money. To do a controlled  
21 buy, you need funds to get approved?

22 A That's correct.

23 Q And if funds don't get approved, that might cause  
24 an operation not to move forward, correct?

1:52PM 25 A Yes, sir.

Kasprzyk - Cross - Singer

1:52PM 1 Q So, with regard to fund approval --

2 MR. SINGER: Ms. Champoux, can you move to Page 6 of the

3 exhibit, please.

4 Thank you very much, Ms. Champoux.

1:52PM 5 Q So, you talked a little bit about this form. This

6 is called a DEA-12 form, right?

7 A Yes, sir.

8 Q And the purpose of this form is to requisition

9 official government funds for purposes of a controlled buy?

1:53PM 10 A Yes, sir.

11 Q And, so, what we're looking at here is the amount

12 of money that potentially is going to be approved for a

13 controlled buy, right?

14 A Yes, sir.

1:53PM 15 Q And that's that thousand dollar figure up in the

16 left side of the document?

17 A Correct.

18 Q And there's signoffs that happen as part of the

19 approval process, right?

1:53PM 20 A Yes, sir.

21 Q We're talking about official government funds so it

22 needs to be accounted for, correct?

23 A Correct.

24 Q So, I'm assuming periodically in the office as the

1:53PM 25 RAC, people from the DEA may come to audit what happened with

Kasprzyk - Cross - Singer

1:53PM 1 official funds?  
2 A Yes, sir, that's correct.  
3 Q And so the purpose of this form is to show someone  
4 who later shows up and asks where did the money go, where it  
1:53PM 5 went?

6 A Yes, sir.  
7 Q And, so, as part of the approval process, the group  
8 supervisor's in charge of the case agent -- in this case John  
9 Flickinger in charge of Mr. John Bongiovanni -- needs to sign  
1:54PM 10 off on his approval for the funds to be released, right?

11 A Correct.  
12 Q And after the GS makes a determination that's  
13 proper, they send the form to you, correct?

14 A Yes, sir.

1:54PM 15 Q Put it in your inbox?

16 A Either in my inbox or they'd come and talk to me  
17 about it depending on the urgency of the operation.

18 Q And then as a RAC, your decision is to decide  
19 whether or not to allow the funds to be used, right?

1:54PM 20 A Yes, sir.

21 Q And so your signature reflected on this document  
22 shows that you made that approval process, right?

23 A Yes, sir.

24 Q And then the next step of the process that we  
1:54PM 25 talked about is that the SAC -- or, I'm sorry, the ASAC in

Kasprzyk - Cross - Singer

1:54PM 1 Albany, or the acting ASAC in Albany, the person who's in  
2 charge of the RAC in Buffalo, needs to also approve those  
3 funds?

4 A Yes, sir.

1:54PM 5 Q And you mentioned that when funds are approved, a  
6 signature is placed on this form, correct?

7 A Yes, sir.

8 Q And we're talking about 2013. So, would this form  
9 be emailed to Albany or would it be delivered? How would it  
1:55PM 10 get there?

11 A Faxed.

12 Q Okay. And then if the ASAC signed the form, it  
13 would be faxed back with the signature?

14 A Yes, sir.

1:55PM 15 Q And then there's another form -- and I realize it's  
16 not in this exhibit -- but you're familiar with a DEA-13  
17 form, correct?

18 A Yes.

19 Q And so that's another form that goes to show the  
1:55PM 20 money trail as far as a controlled buy using official funds,  
21 correct?

22 A I haven't used a DEA-13 form in a number of years,  
23 so it -- honestly have minimal recollection of a DEA-13 form.

24 Q Sure. Let me see if I can help refresh your memory  
1:55PM 25 about it.

Kasprzyk - Cross - Singer

1:55PM 1 So, you're aware that after the approval on the  
2 DEA-12, there's another form that gets signed by the case  
3 agent as well as the confidential source who's getting the  
4 funds themselves, right?

1:55PM 5 A Yes.

6 Q And I realize you may not know what the particular  
7 form number is now but you remember back in your days in the  
8 DEA that the source and the case agent would sign a form that  
9 would actually allow the source to take those funds?

1:56PM 10 A Correct.

11 Q And then after the operation was finished, if there  
12 was any money left over, the source and the case agent would  
13 also sign that form to indicate what happened with those  
14 funds, that you returned the unused portion of the funds?

1:56PM 15 A Yes, I believe that's my recollection, as well.

16 Q Okay. And so with regard to the DEA-12 here,  
17 clearly it's not signed by the ASAC, correct?

18 A That's correct.

19 Q Or the acting ASAC in this case, correct?

1:56PM 20 A Correct.

21 Q But. You don't recall any specific conversations  
22 you may have had with the ASAC about this one particular  
23 operation?

24 A I do not.

1:56PM 25 Q And you can't say why this operation didn't move

Kasprzyk - Cross - Singer

1:56PM 1 forward definitively?

2 A I do not know.

3 Q So, for instance, you don't recall any

4 conversations you had with a Joseph Bongiovanni about why the

1:56PM 5 operation couldn't move forward, right?

6 A Correct.

7 Q You don't recall any conversations you had with GS

8 Flickinger about why the operation couldn't move forward?

9 A Correct.

1:57PM 10 Q So, any type of opinion about why the operation may

11 not have moved forward is just speculation on your part right

12 now, right?

13 A Correct.

14 Q So I want to move back a little bit to 2009. So,

1:57PM 15 Mr. Bongiovanni was working in D-57 at the time, right?

16 A Yes, sir.

17 Q In 2009 you were the GS of D-57, correct?

18 A Yes, sir.

19 Q And you were his first line supervisor, right?

1:57PM 20 A Correct.

21 Q You were in charge of working with him on a

22 day-to-day basis?

23 A Yes, sir.

24 Q Mentoring him on a day-to-day basis?

1:57PM 25 A Yes, sir.

Kasprzyk - Cross - Singer

1:57PM 1 Q You're in charge with reviewing his work product?

2 A Yes, sir.

3 Q You're in charge of monitoring his progress with  
4 certain investigations?

1:57PM 5 A Yes, sir.

6 Q You had the ability to approve confidential sources  
7 that he wanted to use against particular targets?

8 A That's correct.

9 Q You had the ability to approve Mr. Bongiovanni  
1:58PM 10 using controlled -- sorry, using confidential sources, right?

11 A Yes, sir.

12 Q So, back in November of 2009, the earlier parts of  
13 2009 in November, Mr. Bongiovanni approached you about Peter  
14 Gerace, correct?

1:58PM 15 A Correct.

16 Q And he approached you about Peter Gerace about  
17 potentially him wanting to cooperate with the federal  
18 government?

19 A Yes, sir.

1:58PM 20 Q And the reason, like we went through on the form  
21 earlier, was that he was facing a probation or a supervised  
22 release violation, right?

23 A Yes, sir, that's correct.

24 Q And he was looking to potentially reduce his  
1:58PM 25 exposure by cooperating?

Kasprzyk - Cross - Singer

1:58PM 1 A Yes, sir.

2 Q And that's not something that's totally out of the

3 ordinary when someone gets into a situation like that, right?

4 A Correct.

1:58PM 5 Q You've had situations before where people who were

6 on probation or supervised release had a violation and then

7 wanted to cooperate to benefit themselves, right?

8 A That has happened in the past, yes, sir.

9 Q So this was not some weird, out-of-the-norm

1:59PM 10 situation that Mr. Bongiovanni talked to you about that one

11 particular day?

12 A Correct.

13 Q And when you were talking to Mr. Bongiovanni about

14 that, he indicated to you that he knew Peter Gerace in some

1:59PM 15 fashion?

16 A Yes, sir.

17 Q Didn't get into the details of the relationship but

18 that he knew him?

19 A I asked him how he knew him.

1:59PM 20 Q Okay. And what was his response?

21 A He knew him from the neighborhood.

22 Q Okay. So you were aware working with

23 Mr. Bongiovanni, that he grew up in the city of Buffalo?

24 A Yes, sir.

1:59PM 25 Q And that sometimes people who grow up in the same

Kasprzyk - Cross - Singer

1:59PM 1 town they work in, they might know particular targets or  
2 sources in an investigation?

3 A Yes, sir.

4 Q I'm sure that -- you said you grew up in Buffalo?

1:59PM 5 A I did, sir.

6 Q So, at any point in your career did you ever have a  
7 situation where you might know someone you were  
8 investigating?

9 A I don't think so.

2:00PM 10 Q What about particular people that you were looking  
11 at. Did you have a general awareness of who they were or  
12 where they might be?

13 A Yes, sir.

14 Q Okay. And that would be based on your experience  
2:00PM 15 within this town?

16 A Yes, sir.

17 Q Okay. I think you worked up here the entire time  
18 of your career?

19 A With DEA, sir?

2:00PM 20 Q Yes.

21 A Yes, sir.

22 Q I know you worked out in Reno, Nevada as a police  
23 officer before you went to the DEA, correct?

24 A Reno, Nevada, yes, sir.

2:00PM 25 Q So you didn't grow up there, right?

Kasprzyk - Cross - Singer

2:00PM 1 A In Reno?

2 Q Correct.

3 A Yes, no, I grew up in Buffalo.

4 Q So fair statement that when you first started out

2:00PM 5 there, you had to learn a little bit about the town?

6 A Yes, sir.

7 Q And I'm sure there were officers who grew up in

8 Reno who worked on the force there?

9 A Yes.

2:00PM 10 Q They had a little bit of local knowledge that

11 sometimes you rely on?

12 A Yes, sir.

13 Q Okay. All right. So back in November of 2009,

14 there was no open investigation into Peter Gerace being run

2:01PM 15 by the DEA, correct?

16 A Yes, correct.

17 Q There was no open investigation into Pharaoh's

18 Gentlemen's Club being run by the DEA, correct?

19 A Correct.

2:01PM 20 Q But you were aware, based on your coordination with

21 other agencies, that the FBI had an open investigation into

22 Peter Gerace, correct?

23 A After my conversation with Joe and then GS

24 Jansewicz, I became aware of their investigation, yes.

2:01PM 25 Q So you weren't aware of any particular

Kasprzyk - Cross - Singer

2:01PM 1 investigation ongoing with the DEA -- sorry, with the FBI and  
2 Peter Gerace based on your coordination with Jim Jansewicz  
3 and others?

4 A I, I, I'd have to think back to conversations that  
2:01PM 5 I was having with Jim at the time. I talked to him pretty  
6 regularly about different cases that they had working. He  
7 may have mentioned to me during one of those conversations  
8 that they had something going on but I, I, I haven't talked  
9 to Jim about this in years and I don't recall specifically  
2:01PM 10 but it may have come up in one of our prior conversations.

11 Q So, you know, it sounds like, so, Jim was the SSA  
12 at the FBI; is that right?

13 A You mean a group supervisor or supervising agent?

14 Q I guess what I'm trying to figure out the acronyms  
2:02PM 15 because I don't know how familiar the jury is.

16 So, a supervisory special agent at the FBI, is that  
17 the equivalent of the group supervisor GS at the DEA?

18 A Correct.

19 Q And, so, as part of your duties as being a GS and  
2:02PM 20 Mr. Jansewicz's duties as being an SSA would you sometimes  
21 meet up at that level of organization to talk about  
22 investigations that were ongoing?

23 A We would talk, yes.

24 Q Okay. And that was a way to help de-conflict  
2:02PM 25 investigations?

Kasprzyk - Cross - Singer

2:02PM 1 A Correct.

2 Q It was also a way to understand what was going on

3 inside of the investigative world you were operating in?

4 A Correct.

2:02PM 5 Q And you mentioned that SSA Jansewicz, he ran the

6 Safe Streets Task Force at FBI at the time?

7 A That's correct, sir.

8 Q And that was part of Squad 4 at the FBI, correct?

9 A I'm not sure what part of the squad it was. I just

2:03PM 10 knew I was on Safe Streets Task Force and I worked with Jim.

11 I'm not sure what squad they were in.

12 Q No problem. So, as far as Safe Streets Task Force

13 was concerned, you understood it to be a part of the FBI that

14 investigated similar crimes to you, correct?

2:03PM 15 A They had a similar mission, yes. They would work

16 drug trafficking cases.

17 Q Okay. So, you find out about how the FBI has an

18 interest in Peter Gerace and the DEA doesn't have any type of

19 open case with regard to Gerace at the time, correct?

2:03PM 20 A That's correct.

21 Q Or Pharaoh's at the time, correct?

22 A That's correct.

23 Q So that's why you order Special Agent Bongiovanni

24 to make contact with the FBI, correct?

2:03PM 25 A Yes, sir.

Kasprzyk - Cross - Singer

2:03PM 1 Q And you testified about how you weren't certain  
2 whether Mr. Bongiovanni did this when you ordered him to do  
3 it?

4 A Correct.

2:03PM 5 Q And that's because you didn't have any  
6 conversations with him about any type of particular meeting  
7 that happened?

8 A I trusted him to do it. I expected him to do it.  
9 I didn't have any followup conversations whether or not he  
2:04PM 10 did it.

11 Q That's why you can't really say one way or the  
12 other whether or not a meeting ever happened?

13 A That's correct.

14 Q Okay. So, with regard to Government Exhibit 30A.

2:04PM 15 MR. SINGER: Ms. Champoux, if we could bring down that  
16 one exhibit and put up 30A, please.

17 Q So you testified a little bit about this document,  
18 how it relates to information that Mr. Bongiovanni related to  
19 you about Peter Gerace and the coordination with the FBI?

2:04PM 20 A Yes, sir.

21 Q And this was something that agents would do when a  
22 particular case came in, correct?

23 A Yes, sir.

24 Q And this is a document that you reviewed, correct?

2:04PM 25 A Yes, sir.

Kasprzyk - Cross - Singer

2:04PM 1 Q Because I think we went through it, that's your  
2 signature down at the bottom?

3 A Correct.

4 Q And at the time, again, you were his GS,  
2:04PM 5 Mr. Bongiovanni's GS?

6 A That's correct, sir.

7 Q So your responsibility was to review his work  
8 product like we just talked about, right?

9 A Yes, sir.

2:05PM 10 Q And part of that process is you take a look through  
11 the form and if everything's all good to you, you sign it,  
12 correct?

13 A Yes, sir.

14 Q Okay. So I want to talk a little bit more about  
2:05PM 15 the form.

16 MR. SINGER: So, Ms. Champoux, if you could zoom in on  
17 blocks three and four up at the top right.

18 Q So you talked a little bit about this on your  
19 direct testimony. So this is where a file number goes in  
2:05PM 20 that the DEA assigns to a particular file?

21 A That's correct.

22 Q In this case, the file number was C2-06-0120, is  
23 that right?

24 A That's correct.

2:05PM 25 Q So I just want to break down this number a little

Kasprzyk - Cross - Singer

2:05PM 1 more. So the "C2" part of this number (indicating), what is  
2 that referring to?

3 A The "C2" is the office designator. So "C2" would  
4 represent the Buffalo Resident Office.

2:06PM 5 Q Okay. Then if we could move on.

6 This "06" number right here (indicating)?

7 A That --

8 Q Circled like it's a Christmas stocking -- my  
9 apologies for that -- but what does the "06" talk about?

2:06PM 10 A That would reflect or indicate the date that the  
11 particular file was opened. So, in this case "06" would  
12 represent 2006.

13 Q Yeah. So that's -- and that's not reflecting  
14 calendar year, that's reflecting a fiscal year, correct?

2:06PM 15 A Correct.

16 Q So like the federal government, they go by fiscal  
17 years, correct?

18 A Correct.

19 Q And your understanding of this, since you were a  
2:06PM 20 former government employee, is that the fiscal year begins  
21 October 1st of the calendar year?

22 A Correct.

23 Q And then ends September 30th of the next calendar  
24 year?

2:06PM 25 A Correct.

Kasprzyk - Cross - Singer

2:06PM 1 Q So when it's referring to an "06" fiscal year, that  
2 could be a file that potentially's opened up in October of  
3 2005, right?

4 A Correct.

2:06PM 5 Q All the way up until September 30th of 2006,  
6 correct?

7 A Correct.

8 Q All right. And then as far as the next number that  
9 we're looking at here, the "0120", what does that refer to  
2:07PM 10 (indicating)?

11 A I believe that would be the number -- that reflects  
12 the next number available in cases. So, that would have been  
13 the 120th case file opened up that particular year.

14 Q Okay. So it's the 120th DEA case file opened up  
2:07PM 15 within fiscal year 2006, correct?

16 A Correct.

17 Q And then with regard to the G-DEP identifier, you  
18 mentioned that this helps the DEA classify certain cases, is  
19 that right?

2:07PM 20 A That's right, sir.

21 Q And so this one particular letter, number, symbol  
22 right here, the "C1", you see that, that I circled?

23 A I do, sir.

24 Q What's that referring to?

2:07PM 25 A That's a reference to cocaine.

Kasprzyk - Cross - Singer

2:07PM 1 Q And "C1" is referring to powder cocaine, correct?

2 A I believe so, yes.

3 Q And this is another way the DEA keeps track of  
4 cases, correct?

2:08PM 5 A Correct.

6 Q And your understanding about this particular case  
7 involving Peter Gerace and wanting to cooperate is that it  
8 involved potential information about powder cocaine, correct?

9 A Correct.

2:08PM 10 Q All right. So, with regard to this particular case  
11 we're talking about --

12 MR. SINGER: If we zoom out again, Ms. Champoux.

13 Q There's a file title that's located below those two  
14 numbers we were just talking about. Do you see that there in  
2:08PM 15 block six?

16 A I do, sir.

17 Q And this is referring to a file title "Matthew  
18 Scalia"?

19 A Correct.

2:08PM 20 Q So "Matthew Scalia", what's the purpose of that  
21 identifier again -- there again?

22 A The file title name, sir?

23 Q Yes.

24 A That would be the primary target of the  
2:08PM 25 investigation.

Kasprzyk - Cross - Singer

2:08PM 1 Q And when investigations in DEA are run, when the --  
2 when that 120 number is assigned, Matthew Scalia is the  
3 person that the DEA is looking at as the primary target,  
4 correct?

2:09PM 5 A Yes, sir.

6 Q But over time, it's not uncommon for other targets  
7 to develop as part of that investigation, correct?

8 A Yes.

9 Q And if they have some type of relation to the  
2:09PM 10 particular file that's being investigated, it's not  
11 inappropriate for someone to put a new name into a file  
12 that's not the file title name, correct?

13 A If there's an organizational link to the primary  
14 target, yes, that would be common to do.

2:09PM 15 Q So, I guess what I'm getting at -- so like if you  
16 had an investigation that opens up on a new target, you're  
17 not going to create an entirely new file on somebody,  
18 correct?

19 A If there's a link to that original target, you can  
2:09PM 20 put them in the same file, yes.

21 Q And that link, that might reflect an organizational  
22 link to a particular person you're looking at, right?

23 A That's right, sir.

24 Q It might also indicate a particular geographic link  
2:09PM 25 to a target you're looking at?

Kasprzyk - Cross - Singer

2:09PM 1 A It would generally have to be more than a  
2 geographical link. There'd have to be an organization link  
3 to the actual file title.

4 Q It might also involve a particular drug, right?

2:10PM 5 A Involve the drug type, you mean?

6 Q Correct.

7 A No. There would have to be more than just a drug  
8 type link. You'd have to have a link. If you add a new  
9 target into a case file, an original case file, there needs  
2:10PM 10 to be some sort of organizational link to that initial  
11 target.

12 Q Okay. Now, with regards to the Matthew Scalia  
13 file, do you remember what this file was about?

14 A I do not.

2:10PM 15 Q You don't have any specific recollection of it?

16 A No, sir.

17 Q You weren't able to review it before your testimony  
18 in court today?

19 A The Scalia file?

2:10PM 20 Q Correct.

21 A No, no, sir.

22 Q It's just too long ago for you to tell the jury  
23 about what this file involved?

24 A Correct.

2:10PM 25 Q Okay. So, with regard to the specific paragraph --

Kasprzyk - Cross - Singer

2:10PM 1 **MR. SINGER:** If we can zoom in on that, Ms. Champoux.

2 **Q** So this one particular paragraph, you mentioned on  
3 direct, indicates that Peter Gerace acted as a confidential  
4 source regarding information in the past, correct?

2:11PM 5 **A** Correct.

6 **Q** So we talked a little bit about confidential  
7 sources. And I just want to clarify because throughout your  
8 testimony you're using the name "confidential source".

9 You're also using the name "confidential informant". You're  
2:11PM 10 also using "source of information". So I just want to break  
11 down and clarify what exactly you mean by that.

12 So "confidential sources" back in 2013, what are  
13 you referring to when you say "confidential source" in your  
14 testimony?

2:11PM 15 **A** Typically when I'm talking about a "confidential  
16 source", that would be a documented confidential informant  
17 with the DEA.

18 **Q** Okay. And you just used the word "confidential  
19 informant". When you say confidential informant, what are  
2:11PM 20 you referring to? Is it the same as confidential source?

21 **A** It could be, yes. Could be the same.

22 **Q** Yeah. I guess that's what I'm trying to clarify.  
23 So you say it could be the same.

24 What is the difference between a "confidential  
2:12PM 25 source" and a "confidential informant"?

Kasprzyk - Cross - Singer

2:12PM 1 A Well, I would refer and when I would write a  
2 report, typically I would refer to documented informants as  
3 "confidential informants". Some agents would refer to them  
4 as "confidential sources". For the most part, it's one in  
2:12PM 5 the same.

6 Q Okay. So "confidential informants", as you say,  
7 are the same thing as "confidential sources", correct?

8 A Correct.

9 Q And when we refer to confidential sources, or  
2:12PM 10 confidential informants as you say, there are certain  
11 protocols that the DEA requires an agent to follow before  
12 that person can be a confidential source, correct?

13 A That's correct.

14 Q So, for instance, you talked about how there needs  
2:12PM 15 to be an agreement executed between the person who's going to  
16 be the confidential source and the DEA about their  
17 involvement in an investigation?

18 A That's correct, sir.

19 Q And that's something that's signed off by the  
2:12PM 20 confidential source, right?

21 A Yes.

22 Q The case agent, right?

23 A Correct.

24 Q And the group supervisor responsible for the case  
2:13PM 25 agent?

Kasprzyk - Cross - Singer

2:13PM 1 A Correct.

2 Q And that's paperwork that's filed away inside the

3 DEA files, correct?

4 A Correct.

2:13PM 5 Q And because of the safety concerns and

6 confidentiality associated with a confidential source, after

7 a confidential source is signed up to act in that capacity

8 for the DEA, they're assigned a confidential source number,

9 correct?

2:13PM 10 A Correct.

11 Q And that CS number is something that is used on

12 official documentation, right?

13 A That's correct.

14 Q So, moving forward if someone were to write any

2:13PM 15 type of DEA-6 or any other type of paperwork associated with

16 that confidential source, they're going to use the number,

17 not the name, right?

18 A Correct.

19 Q And that's to maintain operational security for

2:13PM 20 that particular asset, right?

21 A That's correct.

22 Q And in this particular document here, you can see

23 how Peter Gerace's is named by his full name, right?

24 A Correct.

2:14PM 25 Q He doesn't have any type of confidential source

Kasprzyk - Cross - Singer

2:14PM 1 number associated with him, correct?

2 A Correct.

3 Q And as GS, you're aware of the confidential sources

4 that work for, or work with case agents assigned to your

2:14PM 5 particular group, right?

6 A Correct.

7 Q So you gain familiarity with about who those

8 confidential sources are because you're in those meetings

9 signing off on the confidential source agreement, right?

2:14PM 10 A Correct.

11 Q And you're also aware of those confidential sources

12 because as a GS, you maintain a log of who those people are

13 working for the particular agents in your group?

14 A The GS doesn't maintain a log.

2:14PM 15 Q So you don't have any type of log or visibility on

16 who the particular confidential sources are working for your

17 agents?

18 A There's a confidential source file room, file

19 cabinet which is kept separately. It's not a log kept by the

2:14PM 20 individual group supervisor.

21 Q Okay. But as the group supervisor, you have access

22 to that one particular file room, correct?

23 A Yes, sir.

24 Q You can look in there to determine who the

2:15PM 25 confidential sources are for the group, correct?

Kasprzyk - Cross - Singer

2:15PM

1 A Correct.

2 Q And, so, in this particular case, you testified  
3 that you don't recall any time where Peter Gerace was  
4 presented to you by Mr. Bongiovanni or anybody else as a  
5 confidential source with that agreement, correct?

2:15PM

6 A That's correct.

7 Q You don't recall any time where you signed off an  
8 agreement for Peter Gerace to become any type of confidential  
9 source, right?

2:15PM

10 A That's correct.

11 Q And I don't know if you ever took a look, but  
12 you're not aware of any documents in existence in DEA custody  
13 that had Peter Gerace listed as a confidential source, right?

14 A I did not look but I'm not aware of any documents  
15 that would have him listed as a confidential source.

2:15PM

16 Q And there's no particular number that you're aware  
17 of that Peter Gerace was assigned to be a confidential  
18 source, right?

19 A Correct.

2:15PM

20 Q But on top of all that, there's another different  
21 avenue where agents get information from in this less  
22 official capacity, right?

23 MR. TRIPI: Objection. Confusing.

24 MR. SINGER: Yeah, you know what. That was a bad  
25 question, Judge. Let me ask it again.

2:16PM

Kasprzyk - Cross - Singer

2:16PM 1 Q So agents don't always get information from  
2 confidential sources, right?

3 A That's correct.

4 Q Sometimes they use other people who are not  
2:16PM 5 officially signed up with the DEA, correct?

6 A Correct.

7 Q And those individuals are known as sources of  
8 information, correct?

9 A Yes, sir.

2:16PM 10 Q SOIs?

11 A Correct.

12 Q And you used SOIs in your capacity as special agent  
13 with DEA, right?

14 A Yes, sir.

2:16PM 15 Q You've had agents who work for you as a GS who use  
16 SOIs, correct?

17 A Yes, sir.

18 Q And you've also had agents and GSs who work for you  
19 as the RAC use SOIs, correct?

2:16PM 20 A Correct.

21 Q That's not some weird law enforcement practice,  
22 right?

23 A It is not.

24 Q It's something that's the normal course of business  
2:16PM 25 within the DEA?

Kasprzyk - Cross - Singer

2:16PM 1 A Correct.

2 Q So, source of information are different because

3 they don't require the same type of approval process that we

4 talked about, right?

2:17PM 5 A That is one of the distinctions, yes.

6 Q They don't require any SOI to sign an agreement

7 with the DEA, correct?

8 A Correct.

9 Q And sources of information are also not provided a

2:17PM 10 particular number, correct?

11 A Correct.

12 Q They're referred to by name inside of paperwork,

13 correct?

14 A Correct.

2:17PM 15 Q And, so, taking a look at this one particular form,

16 you agree with me that Peter Gerace is identified by name,

17 right?

18 A Correct.

19 Q You agree with me he's not identified by any type

2:17PM 20 CD number?

21 A Right.

22 Q You agree with me that you don't have any type of

23 recollection of any CS agreements that you approved for Peter

24 Gerace to act as a CS for the DEA, correct?

2:17PM 25 A That's correct.

Kasprzyk - Cross - Singer

2:17PM 1 Q This one particular document talks about  
2 information that Peter Gerace provided in the past, correct?  
3 A Correct.  
4 Q Now, with regard to information -- I know it's been  
2:17PM 5 a long time and you may not have a specific recollection --  
6 but do you know what type of information Peter Gerace  
7 provided as far as this investigation or other DEA  
8 investigations in the past?  
9 A I do not.  
2:18PM 10 Q Do you know --  
11 A I'm unaware of that information.  
12 Q Do you know when Peter Gerace may have provided  
13 this information as a source of information?  
14 MR. TRIPI: Object as to "may have provided".  
2:18PM 15 Speculative.  
16 THE COURT: No. Overruled.  
17 A I'm not aware of Mr. Gerace providing any  
18 information to the DEA on drug trafficking activities. That  
19 was not anything that I ever was made aware of as a group  
2:18PM 20 supervisor.  
21 Q And you were GS at the time, right?  
22 A Yes, sir.  
23 Q Now you said that you were responsible for about a  
24 dozen or so personnel during that time period?  
2:18PM 25 A Yes, sir, that's correct.

Kasprzyk - Cross - Singer

2:18PM 1 Q And you testified on direct, you know, that it's  
2 just not practical for you to get into the weeds of every  
3 case, right?

4 A Correct.

2:18PM 5 Q So outside the norm of certain details in a case  
6 may not -- you may not become aware of those during your  
7 course of time as a GS?

8 A It is possible that an agent would have had a  
9 conversation with someone and not shared that information  
2:19PM 10 with me. It is possible.

11 Q And you might not have awareness because of that  
12 lack of conversation, right?

13 A Correct.

14 Q Doesn't mean that it didn't happen, it just means  
2:19PM 15 that you're not aware?

16 MR. TRIPI: Objection. Speculative.

17 THE COURT: Overruled.

18 A Question again, sir?

19 Q It didn't mean that it didn't happen, it just means  
2:19PM 20 that you're not aware?

21 A Yes, sir.

22 Q Okay. So, in this particular part here, you'd  
23 agree with me that if Peter Gerace was a official  
24 confidential source, his name wouldn't appear in this  
2:19PM 25 paragraph, right?

Kasprzyk - Cross - Singer

2:19PM 1 A Correct.

2 Q And a number would appear in that paragraph?

3 A Correct.

4 Q There'd be an agreement?

2:19PM 5 A Yes, sir, there'd be an agreement.

6 Q So, when you got presented this one particular

7 DEA-6 for approval as the group supervisor, why didn't you

8 make a correction about what's obvious here: Mr. Gerace is

9 not a confidential source?

2:19PM 10 A I can't explain why I didn't make the correction.

11 Q I think you said earlier on direct, like, hey,

12 sometimes I make mistakes?

13 A Yeah.

14 Q Do you think that's a mistake?

2:20PM 15 A It's a mistake by the agent to incorrectly list him

16 as a confidential source.

17 Q Okay. But it's also a mistake by the supervisor to

18 not catch that, right?

19 A Yes.

2:20PM 20 Q Hindsight being 20/20, if you had to do it all over

21 again, you would have asked Mr. Bongiovanni to correct that,

22 right?

23 A Yes, to "change confidential source" to "source of

24 information".

2:20PM 25 **MR. SINGER:** Okay. Now if we could move off of that

Kasprzyk - Cross - Singer

2:20PM 1 paragraph, Ms. Champoux, and if we could turn to Page 3 of  
2 the document and zoom in on the NADDIS indexing section.

3 Q So you mentioned that NADDIS is a database  
4 maintained by the DEA; is that right, sir?

2:20PM 5 A That's right, sir.

6 Q And NADDIS is a database where names of people who  
7 are either targets or have information the DEA processes are  
8 placed; is that right?

9 A Correct.

2:21PM 10 Q And the purpose of NADDIS is so that if a name  
11 comes up in one investigation, an agent investigating that  
12 case can find out if they have ever been investigated by the  
13 DEA previously?

14 A That's correct.

2:21PM 15 Q And as far as NADDIS was concerned back then in  
16 2009, are we talking about something that's computerized or  
17 are we talking about something that's on paper?

18 A It's computerized.

19 Q Okay. So it was computerized back then. When did  
2:21PM 20 NADDIS get computerized, to your understanding?

21 A Sir, I don't -- I don't know. It has been  
22 computerized ever since I joined DEA in 1989.

23 Q Okay.

24 A So, if it, it -- I don't know when it started but  
2:21PM 25 it was throughout my career NADDIS was a computerized

Kasprzyk - Cross - Singer

2:21PM 1 program.

2 Q Okay. So it was computerized ever since you began

3 your career?

4 A Yes.

2:21PM 5 Q Okay. So, as far as the information here,

6 Mr. Gerace's name appears, is that right?

7 A Yes, sir.

8 Q And it indicates "NADDIS number pending"; is that

9 right?

2:22PM 10 A Correct.

11 Q And that's indicating that there may be the need to

12 assign Mr. Gerace a NADDIS number; is that right?

13 A Yes.

14 Q Okay. And when you reviewed this form back in

2:22PM 15 2009, did you have any particular problem about the fact that

16 a NADDIS number is still pending for Mr. Gerace?

17 A The expectation when the author of the report does

18 the report and they index a particular individual, they would

19 run NADDIS on that individual, see if they were in NADDIS.

2:22PM 20 If they weren't in NADDIS, they would -- if they were in

21 NADDIS, they would reflect the NADDIS number of that person.

22 If they weren't in NADDIS, then they would put NADDIS number

23 pending.

24 Q And that's something you've seen submitted on

2:22PM 25 reports by Mr. Bongiovanni and others, right?

Kasprzyk - Cross - Singer

2:22PM 1 A Correct.

2 Q And as far as the NADDIS number pending, eventually

3 if one got assigned, that would be appended to the report?

4 A Correct.

2:22PM 5 Q That's something that's done by support staff,

6 right?

7 A Or by the agent when he completes, you know, a

8 second report, a followup report, they would include the

9 active NADDIS number then on future investigations.

2:23PM 10 Q And there's a timeline in which agents must submit

11 reports, correct?

12 A Yes, sir.

13 Q It's five days after the investigative action takes

14 place?

2:23PM 15 A Yes, sir.

16 Q So in this particular case, you have a conversation

17 with Mr. Bongiovanni about Peter Gerace potentially

18 cooperating on November 2nd?

19 A Yes, sir.

2:23PM 20 Q And then he forwards this report up to you on the

21 6th?

22 A Correct.

23 Q And that's a short timeframe, correct?

24 A Yes, sir.

2:23PM 25 Q Sometimes other things are going on in the office

Kasprzyk - Cross - Singer

2:23PM 1 at that time?

2 A Correct.

3 Q And so sometimes that might cause a NADDIS number  
4 to remain pending, correct?

2:23PM 5 A Yes, sir.

6 MR. SINGER: Okay. So, Ms. Champoux, if you could take  
7 that down.

8 Q So back in November of 2009, you directed  
9 Mr. Bongiovanni to contact FBI, correct?

2:24PM 10 A Yes, sir.

11 Q And that was based on your conversation you had  
12 with SSA Jansewicz, your counterpart at FBI?

13 A Yes, sir.

14 Q And it was because your understanding was that FBI  
2:24PM 15 had an open case on both Peter Gerace and Pharaoh's  
16 Gentlemen's Club at the time?

17 A Yes, sir.

18 Q And the DEA didn't, correct?

19 A Correct.

2:24PM 20 Q And that was one of the reasons why you didn't  
21 decide to open up a DEA file on Mr. Gerace and Pharaoh's at  
22 that time, correct?

23 A Correct.

24 Q Because there's no use in duplicating effort,  
2:24PM 25 right?

Kasprzyk - Cross - Singer

2:24PM 1 A That's correct, sir.

2 Q So you testified earlier that DEA may have had  
3 interest with regard to Peter Gerace or Pharaoh's if the FBI  
4 didn't have a case, right?

2:24PM 5 A That's correct.

6 Q And that was based on the type of drug that was  
7 being discussed inside of your conversations with  
8 Mr. Bongiovanni?

9 A Yes, sir.

2:24PM 10 Q But ultimately you declined to open up any type of  
11 case because of what FBI was doing, right?

12 A That's correct.

13 Q And besides having an open case -- you talked about  
14 it a little bit earlier -- FBI has similar jurisdiction to  
2:25PM 15 the DEA in investigating drug crimes, correct?

16 A Yes, sir.

17 Q One of the roles is the Safe Streets Task Force is  
18 to investigate drug crimes?

19 A That's correct.

2:25PM 20 Q They also investigate cocaine cases, correct?

21 A Yes, sir.

22 Q And that's why they had an interest in  
23 investigating this particular case, right, to your  
24 understanding?

2:25PM 25 MR. TRIPI: Objection as to FBI's mindset, your Honor.

Kasprzyk - Cross - Singer

2:25PM 1 **THE COURT:** Yeah, sustained.

2 **Q** But that's at least why you wanted to leave the  
3 case at the FBI, correct?

4 **A** I asked Joe Bongiovanni to call the FBI because the  
2:25PM 5 FBI had an existing case. They, they were actively  
6 investigating Gerace and Pharaoh's and it was appropriate for  
7 Joe to call the FBI and to work, to develop -- any  
8 information that he could develop, he needed to give to them  
9 so that they could work together.

2:26PM 10 **Q** Okay. Because you wanted to make sure the FBI had  
11 everything in their power to do -- to investigate any  
12 potential crimes, correct?

13 **A** Because we work together.

14 **Q** Correct.

2:26PM 15 **A** Yes.

16 **Q** And at that point in time, it was, you know, more  
17 or less their case as opposed to the DEA's case, right?

18 **A** Correct.

19 **Q** Now, as far as the Safe Streets Task Force and  
2:26PM 20 FBI's concerned, you don't control any type of investigative  
21 decisions that the FBI makes, correct?

22 **A** I do not.

23 **Q** And as far as the FBI was concerned, after you read  
24 through this one particular DEA-6, you didn't receive any  
2:26PM 25 type of phone calls from the FBI about Gerace, correct?

Kasprzyk - Cross - Singer

2:26PM 1 A I did not.  
2 Q You didn't receive any phone calls from Jim  
3 Jansewicz about Pharaoh's Gentlemen's Club, correct?

4 A I did not.  
2:26PM 5 Q You didn't receive any type of information that  
6 cooperation regarding Peter Gerace didn't work out, right?

7 A No.  
8 Q You're not aware of any type of reasons why  
9 Mr. Gerace may or may not have failed to cooperate?

2:27PM 10 MR. TRIPI: Objection. Assumes facts not in evidence.  
11 Prior answer was no and then he built it into the next  
12 question.

13 THE COURT: No. I don't think so. Overruled.  
14 A Question again, sir.

2:27PM 15 MR. SINGER: Can you read that back, Diane.

16 THE REPORTER: "You're not aware of any type of reasons  
17 why Mr. Gerace may or may not have failed to cooperate?"

18 A I'm not familiar with why he did or did not  
19 cooperate with the FBI.

2:27PM 20 Q And you mentioned that if you're aware that  
21 Mr. Gerace was not cooperating or FBI wasn't moving forward  
22 with their case, this was a case that you may have opened up  
23 an investigation into regarding Peter Gerace, right?

24 A So I understand your question?

2:27PM 25 Q Certainly.

Kasprzyk - Cross - Singer

2:27PM 1 A If the FBI did not have an open case, would we at  
2 the DEA have opened a case?

3 Q So if the DEA -- let me rephrase that.

4 If the FBI wasn't going to move forward on a case  
2:28PM 5 against Gerace, would the DEA have investigated him?

6 A Potentially, yes.

7 Q And, you know, that was based on the particular  
8 drug that was being alleged, is that right?

9 A It would have been based upon the information that  
2:28PM 10 Mr. Gerace was offering to provide but also contingent upon  
11 our ability to sign him up as a documented informant.

12 Q And this was not some situation where Mr. Gerace  
13 was alleging, hey, I know someone who sells an eight ball  
14 down the street on the corner, correct?

2:28PM 15 **MR. TRIPI:** Objection. Exhibit 30A is the evidence of  
16 what was transmitted to this witness, so personal knowledge,  
17 your Honor.

18 **THE COURT:** No. Overruled.

19 Q You want me to repeat that question?

2:28PM 20 A I think I understand it.

21 Q Sure. Go ahead.

22 A The information provided by Gerace through  
23 Agent Bongiovanni was that Gerace knew about kilogram  
24 quantity or kilogram traffickers and that would be of  
2:29PM 25 interest to the DEA.

Kasprzyk - Cross - Singer

2:29PM 1 Q And that's a significant amount of cocaine,  
2 correct?

3 A Yes, sir.

4 Q And that's something that formed your opinion  
2:29PM 5 earlier about why it may pique your interest into  
6 investigating this case, correct?

7 A Correct.

8 Q But you didn't have any type of followup  
9 conversations with Special Agent Bongiovanni about this  
2:29PM 10 situation, right?

11 A Not that I can recall.

12 Q And you don't recall having any type of followup  
13 conversations with Supervisory Special Agent Jansewicz about  
14 what was going on with Gerace, correct?

2:29PM 15 A No, sir.

16 Q And you would agree with me that over the course of  
17 the 25 years you worked at the DEA, sometimes cases just  
18 don't move forward, right?

19 A That's correct.

2:29PM 20 Q Could be for a variety of different reasons?

21 A Yes, sir.

22 MR. SINGER: That's all I have, your Honor. Thank you  
23 very much.

24 THE COURT: Any redirect?

2:30PM 25 MR. TRIPI: I do have redirect, your Honor.

Kasprzyk - Cross - Singer

2:30PM 1       **THE COURT:** I think a juror needs a break so we'll take  
2 a break.  
3       Remember my instructions about not communicating about  
4 the case with anyone, including each other, and don't make up  
2:30PM 5 your mind.  
6       See you back here in about ten minutes.  
7       (WHEREUPON, jury excused.)  
8       **THE COURT:** Anything for the record before we break,  
9 Mr. Tripi?  
2:31PM 10       **MR. TRIPI:** No, your Honor. Thank you for asking.  
11       **THE COURT:** Mr. Singer?  
12       **MR. SINGER:** No, I don't have anything.  
13       **THE COURT:** Great. Thank you.  
14       (WHEREUPON, recess taken.)  
2:31PM 15       (Open court, defendant present.)  
16       **THE CLERK:** We are back on the record for the  
17 continuation of the jury trial in case number 19-CR-227,  
18 *United States of America v. Joseph Bongiovanni.*  
19       All counsel and parties are present.  
2:45PM 20       **THE COURT:** Anything before we bring the jury back?  
21       **MR. TRIPI:** No, Judge.  
22       **THE COURT:** Mr. Singer?  
23       **MR. SINGER:** No, your Honor.  
24       **THE COURT:** Okay. Let's bring them back, please.  
2:45PM 25       (WHEREUPON, jury present.)

Kasprzyk - Redirect - Tripi

2:46PM 1       **THE COURT:** The record will reflect that all our jurors  
2 again are present.  
3       I remind the witness that he's still under oath.  
4       And, Mr. Tripi, you may begin your redirect.

2:46PM 5       **MR. TRIPI:** Thank you very much, your Honor.  
6 **REDIRECT EXAMINATION BY MR. TRIPI:**  
7       **Q** I'd just like to follow up on a couple of questions  
8 Mr. Singer asked you, okay?  
9       **A** Yes, sir.

2:46PM 10       **Q** Part of his questions he was asking you about as a  
11 supervisor your deployment of personnel and resources. Do  
12 you recall that line of questions?  
13       **A** Yes, sir.

2:47PM 14       **Q** As it relates to the matters that you're testifying  
15 about today, the 2009 case and the 2013 case that we showed  
16 you exhibits, did this defendant ever complain to you that  
17 you did not provide him, as a supervisor, sufficient  
18 personnel to support his investigations?  
19       **A** No, sir.

2:47PM 20       **Q** Did this defendant ever complain to you that you  
21 failed to fund or approve funding for the defendant's cases?  
22       **A** No, sir.

2:47PM 23       **Q** In terms of personnel management, you were asked  
24 some questions about that if an enforcement operation takes  
25 three hours, for example, what do agents do after the

Kasprzyk - Redirect - Tripi

2:47PM 1 enforcement operation ends?

2 A They'll return to the office and resume work on

3 whatever other cases they may have pending.

4 Q And do agents work eight-hour days?

2:48PM 5 A Typically not.

6 Q What do they work typically?

7 A Usually it's eight to ten hours per day and often

8 in the evening and on weekends.

9 Q Holidays, as well?

2:48PM 10 A Holidays, as well.

11 Q So, if the DEA needs to authorize funding for an

12 enforcement action, and there's four to five days in between,

13 even if it's a weekend, is that, is that a stumbling -- are

14 weekends a stumbling block for the DEA?

2:48PM 15 A No, sir.

16 Q Okay. Do drug dealers deal drugs on weekends?

17 A Yes, sir, they do.

18 Q Do drug dealers deal drugs on holidays?

19 A Yes, sir, they do.

2:48PM 20 Q Do DEA agents and their supervisors work in kind?

21 A Yes, sir.

22 Q You were asked a little bit about certain types of

23 drugs that the DEA investigates, do you remember that?

24 A I do, sir.

2:49PM 25 Q While you supervised and worked at the DEA Buffalo

Kasprzyk - Redirect - Tripi

2:49PM 1 for 25 years, did the DEA work a lot of marijuana conspiracy  
2 cases?  
3 A Yes, sir, we did.  
4 Q Did that include from 2009 to 2013 while you were a  
2:49PM 5 group supervisor and a RAC?  
6 A Yes, sir.  
7 Q In your experience, do major marijuana traffickers  
8 often deal in other drugs?  
9 A Yes, sir, they do.  
2:49PM 10 MR. TRIPI: Can we pull up Exhibit 8A-7, Page 2, please,  
11 Ms. Champoux. I'd like you to highlight the bottom  
12 paragraph. And could you highlight the last sentence where  
13 it begins Ron Serio's brother.  
14 Q Can you read that for the jury?  
2:50PM 15 A "Ron Serio's brother, Thomas Serio, was previously  
16 arrested and convicted of trafficking 5 kilograms of cocaine  
17 with SOS Robert Mattal. This will be the first buy/walk from  
18 T.S."  
19 Q Does that information indicate this organization  
2:50PM 20 had involvement in cocaine?  
21 A Yes, it does.  
22 MR. TRIPI: If we could zoom out of that particular box,  
23 please.  
24 Q And in the second sentence, is there a reference to  
2:50PM 25 cocaine being one of the drugs involved in that operation,

Kasprzyk - Redirect - Tripi

2:51PM 1 that operation plan?

2 A Okay. The second sentence of the first paragraph?

3 Q Sorry about that, yeah.

4 A Yes, there is, sir.

2:51PM 5 Q Okay. And does that paragraph indicate S. is a

6 trusted associate of the Ron Serio DTO?

7 A Yes, it does.

8 Q Between roughly 2002 and 2013, do you know how many

9 marijuana cases that resulted in press releases were handled

2:51PM 10 by the DEA and the U.S. Attorney's Office, do you know that

11 number?

12 A I do not, sir.

13 Q I'm going to show you something to refresh your

14 recollection.

2:52PM 15 **MR. TRIPI:** Judge, can we approach?

16 **THE COURT:** Sure.

17 (Held at side bar:)

18 **MR. SINGER:** A couple issues. One is that all of these

19 particular press releases --

2:53PM 20 (Court reporter interrupted for clarification.)

21 **MR. SINGER:** So the document is a listing of press

22 releases from the U.S. Attorney's Office and some of them

23 postdate this witnesses's retirement so he wouldn't have any

24 knowledge of those.

2:53PM 25 **THE COURT:** He hasn't even indicated that he has any

Kasprzyk - Redirect - Tripi

2:53PM 1 recollection he needs refreshing. He says he doesn't know.  
2 He didn't say he doesn't remember so we don't even know.

3 **MR. TRIPI:** I'm going there so I wanted to get the  
4 exhibit over to Mr. Singer so if I have to refresh his  
2:53PM 5 recollection, I will. But these are all press releases from  
6 the time period in which he worked there.

7 **THE COURT:** Well, Mr. Singer is saying some of them are  
8 not.

9 **MR. COOPER:** Some of the releases themselves are dated  
2:53PM 10 after he retired but the investigations to which they refer  
11 are investigations into conduct that occurred while he was  
12 the supervisor, as the Court knows.

13 **THE COURT:** In first instance he has to indicate that he  
14 needs his recollection refreshed.

2:54PM 15 Second of all, the question is between roughly 2002 and  
16 '13 do you know how many more listings that resulted in press  
17 releases were handled by the DEA and U.S. Attorney's office.

18 So the fact that the release may have occurred after he  
19 left doesn't change that but somebody would have to know that  
2:54PM 20 a release was issued after he left the office in order to  
21 know the number.

22 **MR. SINGER:** Yeah, I mean.

23 **THE COURT:** You can voir dire on this, too, but there's  
24 no foundation. So the objection's sustained.

2:55PM 25 (Open court:)

Kasprzyk - Redirect - Tripi

2:55PM 1 Q Do you know how many large scale marijuana cases  
2 the DEA handled with the U.S. Attorney's Office from 2009 to  
3 2013?  
4 A I do not recall a specific number.

2:55PM 5 Q Was there more than one?  
6 A There were several, yes.

7 Q I'm going to hand you something to see if it could  
8 refresh your recollection to give us an estimate, okay?  
9 A Thank you.

2:55PM 10 Q Handing up Exhibit 554, Government Exhibit 554.  
11 MR. SINGER: Judge while the witness is reviewing, do  
12 you mind if we side bar.  
13 (Held at side bar:)  
14 MR. SINGER: So beyond whether he's able to refresh his

2:58PM 15 recollection, the other problem, Judge, is that this is like  
16 a hundred page exhibit that I just got handed 30 seconds ago.  
17 And if I'm going to get into crossing him on this, I'm going  
18 to have to get a continuance so I can go through page by  
19 page.

2:58PM 20 THE COURT: No, I don't think so. I don't think so.  
21 This is simply to refresh his recollection.  
22 The question Mr. Tripi just asked is a very different  
23 question than he asked before. So the question about how  
24 many press releases were issued, I think, is a problematic  
2:58PM 25 question because I just don't think he's got to know how many

Kasprzyk - Redirect - Tripi

2:58PM 1 press releases were issued.

2 On the other hand, this may well refresh his

3 recollection on how many cases were large scale and I want to

4 make sure that he understands what the question is, what he's

2:58PM 5 answering. But, you know, you could provide the witness with

6 anything to refresh. You know this, Mr. Singer.

7 **MR. SINGER:** I get that but at the same time, too, if I

8 want to cross him on this point, I'm going to have to go

9 through every single one of these press releases. What I

2:59PM 10 noticed first off, some of the cases don't even originate out

11 of the Western District of New York. His office doesn't work

12 in Rochester. So he's familiar --

13 **THE COURT:** If he gives an exact number. But we don't

14 know what he's going to say. If he says, yeah, we're more

2:59PM 15 than ten or something like that, then I just don't see what

16 the problem is. If you want to delay your cross until

17 tomorrow, we break and we'll delay your cross until tomorrow,

18 that's fine.

19 **MR. TRIPI:** To be clear, I'm not getting into any facts.

2:59PM 20 **THE COURT:** No, we're not getting any facts.

21 **MR. TRIPI:** I just wanted him to know if he thought I

22 was trying to do that.

23 (Open court:)

24 **THE COURT:** So the question, sir, is: Does that refresh

2:59PM 25 your recollection about how many large scale marijuana

Kasprzyk - Redirect - Tripi

2:59PM 1 investigations the DEA and the U.S. Attorney's Office in the  
2 Western District of New York were involved in from 2009 to  
3 2013? Does it refresh your recollection is the first  
4 question.

3:00PM 5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** Go ahead, Mr. Tripi.

7 **Q** Can you provide an estimate?

8 **A** Well, based on my reading of these --

9 **THE COURT:** No, no, not based on your reading.

3:00PM 10 **Q** Your --

11 **THE COURT:** Based on your recollection. We don't  
12 want -- anybody can read that and count numbers, okay.  
13 That's not what we want.

14 The question is: Does it refresh your recollection?

3:00PM 15 **THE WITNESS:** Yes, it does.

16 **THE COURT:** Okay. Now go ahead, Mr. Tripi.

17 **MR. TRIPI:** I'm going to remove the exhibit.

18 **THE COURT:** Yes.

19 **Q** Again, I'm only asking you for an estimate. Did  
3:00PM 20 that refresh your recollection to the point where you could  
21 give us an estimate of how many marijuana cases that were  
22 large-scale were worked by the DEA up until 2013 when you  
23 left from early 2000s on?

24 **THE COURT:** In the Western District.

3:00PM 25 **MR. TRIPI:** In the Western District of New York, of

Kasprzyk - Redirect - Tripi

3:01PM 1 course.

2 A Yes.

3 Q What's your estimate?

4 A My estimate is at least two or three large scale

3:01PM 5 marijuana operations were investigated each year by the  
6 office.

7 Q Every year?

8 A Every year.

9 Q And would a thousand kilogram conspiracy be

3:01PM 10 considered a large-scale marijuana investigation?

11 A A thousand kilogram marijuana conspiracy?

12 Q Yes.

13 A Yes, sir, it would.

14 MR. TRIPI: If we can go to Page 5 of this exhibit,

3:01PM 15 Exhibit 8A-7, please.

16 Q Mr. Singer asked you some questions -- I think he  
17 prefaced with the word "sometimes" and then he asked you some  
18 questions about operations. Do you remember that line of  
19 questioning?

3:01PM 20 A I do, sir.

21 Q Okay. Looking at Page 5 of this exhibit, the  
22 signature line, when the case agent is signing a document as  
23 in this instance, is the agent verifying the information  
24 above the signature line?

3:02PM 25 MR. SINGER: Objection. Outside the scope.

Kasprzyk - Redirect - Tripi

3:02PM 1 Q The accuracy of the information?

2 THE COURT: I'm sorry?

3 MR. SINGER: Outside the scope.

4 THE COURT: No. Overruled.

3:02PM 5 A Yes, he is, sir.

6 Q So, in this instance -- not sometimes but in this

7 instance -- the defendant was verifying that this personnel

8 was available for an operation May 6th, 2013; is that

9 correct?

3:02PM 10 A That's correct, sir.

11 Q By 2009 -- we're switching now to the other

12 exhibit -- but by 2009, and certainly by 2013, would you have

13 considered the defendant an experienced agent?

14 A Yes, sir, I would.

3:03PM 15 Q Is your knowledge of Exhibit 8A-7 limited to

16 whatever accuracy and truthfulness the defendant wrote in the

17 document?

18 A Yes, sir.

19 Q Can we put up Exhibit 30A, please.

3:03PM 20 Regarding Exhibit 30A, is your awareness of the

21 information regarding Peter Gerace in this document limited

22 to the accuracy of what the defendant wrote in the report

23 regarding what Gerace told him?

24 A Yes, sir, that's correct.

3:03PM 25 Q You were asked some questions about the fact that

Kasprzyk - Redirect - Tripi

3:03PM 1 his name is in the document. Do you remember that line of  
2 cross?

3 A I do, sir.

4 Q You talked about how a confidential source gets a  
3:03PM 5 number and a separate file that's secured separately?

6 A Yes, sir.

7 Q After that point in time, do you remember, as a  
8 supervisor, the number of every informant of every agent?

9 A I do not, sir.

3:04PM 10 Q When you see an informant's number in a report, do  
11 you go and independently look through that file and find out  
12 who the informant was?

13 A Typically not.

14 Q Do you rely on the agent who's authoring the report  
3:04PM 15 to be accurate?

16 A Yes, sir, I do.

17 Q Could the office even practically function, in your  
18 view, if you had to do that for every report that references  
19 a confidential source?

3:04PM 20 A It, it could not. It would -- it would severely  
21 slow down the review process of cases.

22 Q And how does that impact the DEA's ability --  
23 slowing down the review process of cases, how does that  
24 impact the DEA's ability to effectively enforce operations in  
3:04PM 25 the street?

Kasprzyk - Redirect - Tripi

3:04PM 1 **MR. SINGER:** Objection. Relevance.

2 **THE COURT:** Overruled.

3 A It would impact our ability to work efficiently and  
4 to work quickly and to be agile when it comes to conducting  
3:05PM 5 drug investigations.

6 **Q** Regarding this exhibit, Mr. Singer asked you a line  
7 of questions on cross about knowing people from the  
8 neighborhood. I think he even referenced back to your time  
9 in Reno; do you recall that?

3:05PM 10 A I do, sir.

11 **Q** Did the defendant ever tell you regarding Peter  
12 Gerace that he went out to dinners with him?

13 A No, sir, he did not.

14 **Q** Did he ever tell you he went on double dates with  
3:05PM 15 him.

16 A No, sir, he did not.

17 **Q** Did he ever tell you they communicated on the phone  
18 frequently?

19 A No, sir, he did not.

3:05PM 20 **Q** Did he ever tell you at any point in time in your  
21 tenure at DEA up to the point that you retired, that they  
22 went on vacation together?

23 A No, sir, he did not.

24 **Q** Would you have permitted the defendant to handle  
3:05PM 25 any aspect of any case involving Gerace if you knew any of

Kasprzyk - Redirect - Tripi

3:05PM

1 that?

2 A No.

3 Q Whether a source of information, a confidential  
4 source or a target, would you allow him anywhere near that  
5 case?

3:06PM

6 A No, sir, I would not.

7 Q Does DEA have professional conduct standards for  
8 agents associating and fraternizing with known convicted  
9 felons?

3:06PM

10 A Yes, sir, it does.

11 Q What is that policy?

12 A It's prohibited.

13 Q Earlier when you were explaining case priorities,  
14 you mentioned sometimes it depends upon who the target was or  
3:06PM 15 what they're connected to. I might have misstated it a  
16 little bit but do you remember that line of cross?

17 A Yes, sir, I do.

18 Q Did the defendant ever tell you that Gerace was the  
19 grandson of Joseph Todaro, Sr.?

3:06PM

20 A No, sir, he did not.

21 Q Were you familiar with that name through your  
22 career in law enforcement in Buffalo?

23 A Yes, sir, I was.

24 Q What was the reputation of that person?

3:07PM

25 MR. SINGER: Objection.

Kasprzyk - Redirect - Tripi

3:07PM 1 **THE COURT:** Sustained.

2 **Q** Did that person have a reputation in the law

3 enforcement community that overlapped your 25 years as a DEA

4 agent in Buffalo?

3:07PM 5 **MR. SINGER:** Objection.

6 **MR. TRIPI:** We briefed this in a pretrial.

7 **THE COURT:** Yeah. Overruled.

8 **MR. SINGER:** Judge, can we approach on this again.

9 **THE COURT:** Sure.

3:07PM 10 (Held at side bar:)

11 **MR. SINGER:** The purpose of the IOC evidence you ruled

12 was to allow it in based on beliefs that my client may have

13 held.

14 **THE COURT:** Right.

3:07PM 15 **MR. SINGER:** An affinity, whatever someone's reputation

16 in a law enforcement community does not have any bearing on

17 that because, again, what has to be shown is nexus that this

18 witness --

19 **THE COURT:** I don't think so.

3:07PM 20 **MR. SINGER:** Nexus on top of --

21 **THE COURT:** It can be an inference. So his reputation

22 in law enforcement is he's involved in Italian Organized

23 Crime. I think an inference can be drawn that Bongiovanni

24 shared that knowledge that that was his reputation.

3:08PM 25 **MR. TRIPI:** I'll add, Judge, when he's interviewed in

Kasprzyk - Redirect - Tripi

3:08PM 1 June of 2019, he specifically says that Gerace is the  
2 grandson of Todaro, Sr., so there will be later evidence  
3 further even linking that up. Just --

4 **MR. SINGER:** But the problem is, Judge, that evidence  
3:08PM 5 discusses what my client understood and may have believed  
6 from his personal perspective.

7 (Court reporter interrupted for clarification.)

8 **THE COURT:** He's not talking about anything what Joseph  
9 Bongiovanni may have thought or believed. He's talking about  
3:08PM 10 what this witness believed.

11 **MR. SINGER:** That's getting into the problem.

12 **THE COURT:** It's not talking about what this witness  
13 believes. It's talking about what his reputation was in the  
14 law enforcement community, a community that both Bongiovanni  
3:08PM 15 and this witness were part of. So I think it's fair game and  
16 an inference can be drawn from that that Bongiovanni shared  
17 knowledge of that reputation. Now, whether it's enough for  
18 the jury to believe that Bongiovanni believed that, that's  
19 another question.

3:09PM 20 **MR. SINGER:** But, again, it's putting a stamp of  
21 approval on law enforcement by we believe this exists and we  
22 don't have the opportunity or evidence to rebut that because  
23 we're precluded from getting into the underlying facts  
24 itself. So that's the problem, Judge. I understand when you  
3:09PM 25 disagree with the Court's ruling in regard to what our client

Kasprzyk - Redirect - Tripi

3:09PM 1 thought but that the Court's ruling --

2 **THE COURT:** I'm going to allow --

3 **MR. SINGER:** -- getting into --

4 **THE COURT:** I'm going to allow evidence of reputation in

3:09PM 5 the law enforcement. If it was what the newspapers reported,

6 no. But reputation in the law enforcement community, yes.

7 That's as far as it's going but, yes.

8 **MR. SINGER:** Thank you.

9 (Open court:)

3:10PM 10 **MR. TRIPI:** May I please have the question read back

11 just so I can have it accurately.

12 **THE COURT:** Sure.

13 **THE REPORTER:** "Did that person have a reputation in the

14 law enforcement community that overlapped your 25 years as a

3:10PM 15 DEA agent in Buffalo"?

16 **Q** Your answer to that is?

17 **A** Yes, sir.

18 **Q** And what was the reputation of Joseph Todaro, Sr.

19 in the law enforcement community?

3:10PM 20 **A** That he was involved with organized crime in the

21 Western New York area.

22 **Q** Had you known that information regarding the

23 relationship between Gerace as referenced in this report and

24 Todaro, Sr., could that have impacted the DEA's assessment of

3:10PM 25 how much investigative effort for you to follow up with in

Kasprzyk - Redirect - Tripi

3:10PM 1 this case?

2 A Yes, sir, it would have.

3 **MR. TRIPI:** One moment, please, your Honor.

4 (WHEREUPON, a discussion was held off the record.)

3:11PM 5 **MR. TRIPI:** One or two last questions, your Honor.

6 I think one of the last things I would like to go to

7 Page 2 of Exhibit 30A.

8 **Q** Mr. Singer asked you about the indexing section  
9 NADDIS pending; do you see that?

3:11PM 10 A Yes, sir, I see that.

11 **Q** And earlier you described that that meant that  
12 there was not a NADDIS number, in sum and substance; is that  
13 right?

14 A Yes, sir, that's correct.

3:11PM 15 **Q** I'm going to hand you Government Exhibit 437. And  
16 you're familiar with NADDIS?

17 A Yes, sir, I am.

18 **Q** You're familiar with NADDIS, how it's stored in the  
19 database and how it's printed out?

3:12PM 20 A Yes, sir.

21 **Q** Do you recognize Exhibit 437?

22 A Yes, this is a NADDIS printout of a individual.

23 **Q** Do you recognize that as a DEA NADDIS printout of a  
24 specific individual?

3:12PM 25 A Yes, sir.

Kasprzyk - Redirect - Tripi

3:12PM 1 Q Is that made in the ordinary course of DEA  
2 business, the NADDIS printouts?  
3 A Yes, sir.  
4 Q Regular course of business to make and keep that  
3:12PM 5 record?  
6 A Yes, sir, that's correct.  
7 Q And I think earlier you indicated NADDIS has been  
8 computerized since you've been an agent?  
9 A Correct.  
3:12PM 10 Q So are agents under the obligation -- is the DEA  
11 under an obligation to keep those reports accurate?  
12 A Yes, sir, they are.  
13 MR. TRIPI: Government offers Exhibit 437, your Honor.  
14 THE COURT: 437, your Honor.  
3:12PM 15 MR. SINGER: Can I have just one moment, Judge.  
16 THE COURT: Sure.  
17 (WHEREUPON, a discussion was held off the record.)  
18 MR. TRIPI: Did you want to see it?  
19 THE COURT: Yeah, let me take a look.  
3:13PM 20 MR. SINGER: Judge, we have an objection on hearsay and  
21 authenticity grounds. There's other information in the  
22 document that is also hearsay.  
23 THE COURT: So you're objecting because there's hearsay  
24 within hearsay?  
3:14PM 25 MR. SINGER: Hearsay within hearsay but also on the

Kasprzyk - Redirect - Tripi

3:14PM 1 authentication aspect, Judge.

2 **THE COURT:** Because I don't think the witness has

3 testified he actually entered this information.

4 **MR. TRIPI:** It's not a requirement of a business record,

3:14PM 5 personal entry.

6 **MR. SINGER:** It may not be a requirement of a business

7 record.

8 **THE COURT:** If we're going to argue, come on up.

9 (Held at side bar:)

3:14PM 10 **MR. SINGER:** So there's the authenticity aspect, Judge.

11 I don't think the witness can authenticate the documents.

12 **THE COURT:** Why can't he authenticate? He worked at

13 DEA, he's familiar with what NADDIS reports look like, he

14 sees this.

3:14PM 15 How was this generated, Mr. Tripi?

16 **MR. TRIPI:** It's from the DEA system. It's Francis

17 Dicarlo provided it. He's the records custodian.

18 **THE COURT:** Does this guy know that?

19 **MR. TRIPI:** He just authenticated that it's a NADDIS

3:15PM 20 report from the NADDIS system. I just asked him if he's

21 dealt with those reports and how they look when they're

22 printed up from the system.

23 **MR. SINGER:** He can't authenticate the records. He

24 can't -- this looks like a NADDIS report.

3:15PM 25 **THE COURT:** There's a lot of ways that you can

Kasprzyk - Redirect - Tripi

3:15PM 1 authenticate something. I mean, is Dicarlo going to testify?  
2 **MR. TRIPI:** Of course. Dicarlo is going to testify  
3 later. But at the same time, this NADDIS report ties  
4 directly in. We could offer it subject to questioning if you  
3:15PM 5 want.  
6 **THE COURT:** Yeah, authentication.  
7 **MR. TRIPI:** Judge, I do think -- if I may -- I do think  
8 it's been appropriately authenticated. He said he recognized  
9 it as a NADDIS printout from the DEA. I laid the foundation  
3:15PM 10 and he said that.  
11 **THE COURT:** But if I let Mr. Singer voir dire, does he  
12 know exactly where this came from, does he know how it was  
13 produced, does he know where it came from?  
14 **MR. TRIPI:** My argument would be that's a weight not  
3:16PM 15 admissible objection.  
16 **THE COURT:** No, I don't think so. I think that is an  
17 admissible question. We don't know if it's the real document  
18 or not and Dicarlo can testify to that.  
19 **MR. TRIPI:** We got it from him. It's in court.  
3:16PM 20 **THE COURT:** I understand.  
21 **MR. TRIPI:** Judge, it's an authentic document.  
22 **THE COURT:** I understand and I think I will allow it  
23 subject to authentication by Dicarlo later on.  
24 **MR. SINGER:** And the other problem is the hearsay within  
3:16PM 25 the hearsay aspect. So it's not just information pertaining

Kasprzyk - Redirect - Tripi

3:16PM 1 to an entry regarding Peter Gerace when he was put in the  
2 system. It lays out factual case details on his case and  
3 other cases which is all hearsay.

4 **MR. TRIPI:** That could be part of the business record,  
3:16PM 5 the whole entire file that comes in is a DEA record down the  
6 road.

7 **THE COURT:** But the point --

8 **MR. TRIPI:** I gave you the record itself, Judge, there's  
9 not the fact --

3:17PM 10 (Court reporter interrupted for clarification.)

11 **MR. TRIPI:** I'm sorry, Rob, the fact that he's in NADDIS  
12 going back to 1992, which is why I showed it to you, is  
13 clearly relevant to the testimony that was offered here  
14 today. Not pending. Pending meant that there is no number.  
3:17PM 15 He's had a number. Gerace has had a number since 1992.

16 **THE COURT:** So can we submit the document subject to  
17 redaction of the stuff that's in there? You want to admit  
18 only for the purpose that he had it?

19 **MR. TRIPI:** I'm really only interested in the fact that  
3:17PM 20 he's had a NADDIS number since 1992.

21 **THE COURT:** We're going to admit it subject to  
22 redaction.

23 And anything that's hearsay, Mr. Singer, you can tell me  
24 what's hearsay within hearsay. Anything hearsay within  
3:17PM 25 hearsay can be redacted.

Kasprzyk - Redirect - Tripi

3:17PM 1 **MR. SINGER:** Anything other than the -- the only reason  
2 they're admitting the record is to show the date. Other than  
3 that, it would just would be hearsay.  
4 **THE COURT:** To show he's in the system and a date.

3:18PM 5 **MR. TRIPI:** Hearsay requires dates of assertions and  
6 dates of entry is not assertions.  
7 **THE COURT:** No, the date can come in, and the fact that  
8 there is the record and so can anything else that's not an  
9 assertion. I haven't looked at the record close enough.

3:18PM 10 Mr. Singer is telling me that there are things in there that  
11 constitute assertions that are factual statements that may  
12 not -- that may be hearsay within hearsay. That could very  
13 well be the case. Just because it's a business record  
14 doesn't mean that everything in it comes in.

3:18PM 15 **MR. TRIPI:** For purposes of finishing this witness, I'll  
16 lead on it a couple of questions that don't go into the  
17 underlying document. Then we can work it out later on, if  
18 that works, just to move it along.  
19 **THE COURT:** Yes.

3:18PM 20 (Open court:)  
21 **Q** Mr. Kasprzyk, have you had an opportunity to review  
22 Government Exhibit 437?  
23 **A** Yes, sir, I have.  
24 **Q** And did you recognize that document as a NADDIS  
3:19PM 25 report for a Peter Gerace?

Kasprzyk - Redirect - Tripi

3:19PM 1 A Yes, sir, I did.

2 Q And does that report indicate he had a NADDIS  
3 number, 2998032, and the date of record was January 16th,  
4 1992?

3:19PM 5 A Yes, sir.

6 Q So does that information indicate that Mr. Gerace  
7 had a NADDIS number since January 16th 1992?

8 A That's correct.

9 Q And so when that is compared to what's written  
3:19PM 10 here, "NADDIS pending" in 2009 is not accurate?

11 A Correct.

12 Q Did you independently look at that and go research  
13 NADDIS to see in the defendant's report was accurate and  
14 truthful?

3:19PM 15 A I did not.

16 **MR. TRIPI:** Judge, I'll offer this.

17 **MR. SINGER:** Subject to conferencing what redaction is  
18 appropriate, as we discussed.

19 **THE COURT:** Okay. Subject to redaction and also subject  
3:20PM 20 to authentication through another witness.

21 **MR. TRIPI:** Yes, Judge.

22 **THE COURT:** It's admitted with those limitations.

23 **MR. TRIPI:** At this juncture, I understand, Judge.

24 **THE COURT:** So we're not going to show it to the jury  
3:20PM 25 until it's been fully authenticated.

Kasprzyk - Recross - Singer

3:20PM 1 **MR. TRIPI:** Understood.

2 **THE COURT:** Mr. Singer, anything more?

3 **RE CROSS-EXAMINATION BY MR. SINGER:**

4 **Q** Mr. Kasprzyk, you testified about Government

3:20PM 5 Exhibit 30A, right?

6 **A** 30A is which exhibit, sir?

7 **Q** Certainly.

8 **MR. SINGER:** Ms. Champoux, if you could just put that

9 back up on the screen, this document?

3:20PM 10 **A** Yes, sir, thank you.

11 **Q** It's the DEA-6, correct?

12 **A** Yes, sir.

13 **Q** And you testified that your information on this was

14 limited to what's provided in the document?

3:20PM 15 **A** Correct.

16 **Q** But that's not accurate, right?

17 **A** What's provided in the document and what

18 conversations I had with Joseph Bongiovanni.

19 **Q** That's what I'm getting at.

3:21PM 20 **A** Yeah.

21 **Q** Besides reading this document, you also had

22 conversations with Mr. Bongiovanni about what was going on in

23 this case, right?

24 **A** Correct.

3:21PM 25 **Q** You had conversations with SSA Jansewicz, correct?

Kasprzyk - Recross - Singer

3:21PM 1 A Yes, sir.

2 Q So what you said there on redirect was not a  
3 hundred percent correct, correct?

4 A You're going to have to repeat your question, sir.

3:21PM 5 Q What you said on redirect about "I only know  
6 information based on this document", that's not correct?

7 MR. TRIPI: Objection. The question was relating to  
8 specifically to what was represented of observations of the  
9 document.

3:21PM 10 THE COURT: Overruled.

11 A Again, your question?

12 Q Again, your information that you got about this  
13 case was not solely limited to this document, right?

14 A Correct.

3:21PM 15 Q Okay. And the same thing goes for Exhibit 8A-7.

16 MR. SINGER: Ms. Champoux, can you put this one down and  
17 put that up on the screen again.

18 Q So, similar to you testified on redirect you only  
19 knew what was information based on this one operations plan,  
3:22PM 20 correct?

21 A Correct.

22 Q But that's not a hundred percent true, as well,  
23 correct?

24 A The information that I know about this case came  
3:22PM 25 from the operational plan that was presented to me by GS John

Kasprzyk - Recross - Singer

3:22PM 1 Flickinger.

2 Q Exactly. So that's what I'm getting at.

3 In addition to this operation plan and rating, you

4 also had a sitdown with GS Flickinger, right?

3:22PM 5 A Correct.

6 Q That's something you do on all operations, correct,

7 in the office, right?

8 A Yes.

9 Q And something that the GS did, right?

3:22PM 10 A Yes, sir.

11 Q That conversation I realize was too long ago to

12 remember the details but you would at least follow the

13 procedure of GS Flickinger telling you why this operation

14 should move forward, right?

3:22PM 15 A Yes, sir.

16 Q And so that's another piece of information that you

17 have when making a decision about what to do here in this

18 situation with the operation, right?

19 A Yes, sir.

3:22PM 20 Q Okay.

21 **MR. SINGER:** That's all I have, Judge. Thank you.

22 **THE COURT:** Anything more?

23 **MR. TRIPI:** No, your Honor. Thank you.

24 **THE COURT:** You can step down.

3:23PM 25 (**WHEREUPON,** witness excused.)

Kasprzyk - Recross - Singer

3:23PM

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* \* \*

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I  
certify that these original notes are a true and correct  
record of proceedings in the United States District Court  
of the Western District of New York before the  
Honorable Lawrence J. Vilardo on August 5, 2024.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR  
Official Court Reporter